No. 91-962

Supreme Court, U.S.
FILED
DEC 13 1991
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, *ET AL.*,

Appellees.

On Appeal from the United States District Court for the Northern District of Alabama

---

JURISDICTIONAL STATEMENT

PAMELA S. KARLAN
Counsel of Record
University of Virginia
School of Law
Charlottesville, Va. 22901
(804) 924-7810

ROSE M. SANDERS
Chestnut, Sanders, Sanders & Pettaway, P.C.
P.O. Box 1305
Selma, Alabama 36702-1305
(205) 875-9264

Attorneys for Appellants

December 1991

QUESTION PRESENTED

1. Under section 5 of the Voting Rights Act of 1965 as amended, is preclearance required for an enactment that:

(a) requires the holding of a referendum;

(b) limits the voters who can vote in a newly required referendum to residents of only a portion of a city that lies within two counties;

(c) prohibits local jurisdictions from conducting such a referendum in tandem with any mayoral or councilmanic election; and

(d) prescribes the language to be placed on the ballot with respect to such a referendum?

2. Under section 5 of the Voting Rights Act of 1965 as amended, must preclearance be sought when a local jurisdiction exercises its discretion to select and set the date for a special referendum?

PARTIES

The following were parties in the courts below:

The Greene County (Ala.) Racing Commission

The Greene County Board of Education

The Greene County Commission; and

Cynthia Harris, a black registered voter and resident of Birmingham and of Jefferson County, Alabama,

Plaintiffs;

The City of Birmingham, Alabama

The Jefferson County, Alabama, County Commission

The Birmingham Racing Commission

Birmingham Sports Management; and

Milton McGregor,

Defendants.

TABLE OF CONTENTS

		Page
Questions Presented		i
Parties in the Court Below		ii
Table of Contents		iii
Table of Authorities		iv
Opinion Below		1
Jurisdiction		2
Statutory Provisions		3
Statement of the Case		3
The Questions are Substantial		8
I.	The Court Below Critically Misinterpreted the Scope of Section 5's Coverage	10
II.	The Court Below Applied the Wrong Burden of Proof to the Wrong Issue	16
III.	The Court Below Misunderstood Its Statutorily Limited Role	18
Conclusion		20

TABLE OF AUTHORITIES

Pages

Cases

Allen v. State Board of Elections, 393 U.S. 544 (1969) 9,10,12,13-14,15,20

Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), *aff'd,* 459 U.S. 1166 (1983) 11

Castaneda v. Partida, 430 U.S. 482 (1977) .. 20

Clark v. Roemer, 111 S. Ct. 2096 (1991) 15,16

City of Pleasant Grove v. United States, 479 U.S. 462 (1987) 20

Conner v. Waller, 421 U.S. 656 (1975) (per curiam) 9,13

Dotson v. City of Indianola, 521 F. Supp. 934 (N.D. Miss. 1981) (three-judge court), *aff'd,* 456 U.S. 1002 (1982) 10

Dougherty County Board of Education v. White, 439 U.S. 32 (1978) 10,20

Garcia v. Guerra, 744 F.2d 1159 (5th Cir. 1984), *cert. denied,* 471 U.S. 1065 (1985) 11

Georgia v. United States, 411 U.S. 526 (1973) 9,14,16

Lucas v. Townsend, 108 S. Ct. 1763 (1988) (Kennedy, J., in chambers) 11,18

McCain v. Lybrand, 465 U.S. 236 (1984) 9,12,17

Morris v. Gressette, 432 U.S. 491 (1977) 15

NAACP v. Hampton County, 470 U.S. 166 (1985) 10,11,12,14,18,20

Perkins v. Matthews, 400 U.S. 379 (1971) ... 9,10,20

South Carolina v. Katzenbach, 383 U.S. 301 (1966) 16

United States v. Board of Commissioners, 435 U.S. 110 (1978) 9,10,17

United States v. Warren County, 429 U.S. 642 (1977) 12

Watkins v. Mabus, 60 U.S.L.W. 3358 (Nov. 12, 1991) (No. 91-434) 8

Statutes

28 U.S.C. § 1253 (1988) 2

28 U.S.C. § 2284 (1988) 5

Voting Rights Act of 1965, § 5, 42 U.S.C. § 1973c (1988) ..... 2, *passim*

Code of Ala. § 11-65-1 (Michie 1991 Supp.) 2,3,7

Code of Ala. § 11-65-2 (Michie 1991 Supp.) 2

Code of Ala. § 11-65-4 (Michie 1991 Supp.) 2,4,8

Birmingham City Council Resolution 1257-91 . 2

Regulations

28 C.F.R. Part 51, Appendix (1991) 5

28 C.F.R. § 51.13 (1991) 7,10,11

28 C.F.R. § 51.17 (1991) 11

No. 91-____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, *ET AL.*,

Appellees.

On Appeal from the United States District Court for the Northern District of Alabama

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion and order of the three-judge district court is contained in the Appendix to this Jurisdictional Statement [hereafter "J.S. App."], at pages A-2 to A-23; it is not reported. The opinion and order of the three-judge district court denying the motion for reconsideration is also unpublished. It appears at J.S. App. A-24 to A-28.

JURISDICTION

The district court entered judgment against appellant on August 26, 1991, J.S. App. at A-23, and denied the motion to reconsider on September 19, 1991, J.S. App. at A-28. The Notice of Appeal was filed on October 17, 1991. J.S. App. at A-41. This Court has jurisdiction under 28 U.S.C. § 1253.

STATUTORY PROVISIONS INVOLVED

This case involves section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c, which is reprinted in the Appendix, at pages A-29 to A-31. It also involves Code of Ala. §§ 11-65-1(14), 11-65-2(a)(18), and 11-65-4(b), (c), and (d), as amended by Alabama Act 91-187 (July 28, 1991). Those provisions are set out in the Appendix, at pages A-31 to A-37. Finally, it involves Resolution 1257-91 of the Birmingham City Council. That resolution is reprinted in the Appendix at pages A-37 to A-40.

STATEMENT OF THE CASE

Except to the extent that it is authorized by statute, pari-mutual betting on horse and greyhound racing is prohibited by the Alabama Criminal Code. J.S. App. at A-5. In 1984, the Alabama Legislature enacted Act No. 84-131, which permitted a Class 1 municipality[1] to permit pari-mutual betting on horse racing if a majority of the

---

[1] Birmingham is the only Class 1 municipality in Alabama. *See* J.S. App. at A-8 n. 8.

residents of the municipality and of the county in which the municipality is located[2] approved such a proposal through a referendum.

At an election conducted on June 12, 1984, majorities of the voters in Birmingham and in Jefferson County (where the entire city of Birmingham was then located) approved a referendum providing for pari-mutual horse racing in the city. J.S. App. at A-6 to A-7. Accordingly, Birmingham established a Racing Commission and issued a license for a horse-racing facility. *Id.* at A-7.

The track proved to be an economic failure, losing over $20 million and plunging its owners and operators into bankruptcy. *Id.*

In 1991, the Alabama Legislature enacted Act No. 91-187 (codified at Code of Ala. §§ 11-65-1 to 11-65-47 (Michie 1991 Supp.)) [hereafter referred to as the "Dog Racing Act"]. The Act became law on July 28, 1991, without the signature of the governor. J.S. App. at A-8 n. 7.

As the district court noted, the Dog Racing Act "substantially amended Act No. 84-131, *inter alia*, to authorize greyhound racing and pari-mutual betting thereon in the City of Birmingham." J.S. App. at A-8.

Of particular salience to this appeal, the Dog Racing Act:

- required Birmingham to call for an election prior to

---

[2] At the time Act 84-131 was passed, the City of Birmingham was contained entirely within Jefferson County. *See* Code of Ala. § 11-65-1(3) (Michie Supp. 1991). Subsequently, however, Birmingham annexed territory lying within Shelby County. For purposes of Act 84-131, however, Birmingham was defined as being located entirely within Jefferson County.

January 1, 1992, to determine whether to authorize greyhound racing and pari-mutual betting on greyhound racing[3]

- limited the franchise to those Birmingham voters who were also Jefferson County residents (thereby excluding city voters who lived in the Shelby County portion of the city[4]

- prohibited Birmingham from conducting the greyhound racing referendum at the same time that it held its election for mayor or for two or more city council members[5]

---

[3] Dog Racing Act, § 4(b), Code of Ala. § 11-65-4(b) (Michie Supp. 1991); *see* J.S. App. at A-9.

[4] Dog Racing Act, § 4(b), Code of Ala. § 11-65-4(b), (Michie 1991 Supp.), provides that the required election "shall be held only among the qualified voters of the host county, and no voters of the sponsoring municipality who reside in counties other than the host county shall be permitted to vote in such election." (For passage, an affirmative vote is required both among county voters as a whole and among county voters who are residents of the sponsoring municipality.) *See also* J.S. App. at A-32 to A-33 (reprinting section 4(b)). Section 2(a)(18) of the Dog Racing Act, Code of Ala. § 11-65-2(a)(18), defines the host county as "the county in which a majority of the residents of the sponsoring municipality reside, as determined by the most recent federal decennial census." *See also* J.S. App. at A-31 (reprinting section 2(a)(18)). In the case of Birmingham, this is Jefferson, rather than Shelby, County. *See* J.S. App. at A-9.

[5] Dog Racing Act § 4(c), Code of Ala. § 11-65-4(c) (Michie 1991 Supp.) (reprinted in J.S. App. at A-35); *see* J.S. App. at A-9. Thus, although Birmingham was scheduled to have its regular mayoral election in the fall of 1991, it was prohibited from conducting the greyhound racing referendum at the same time. Testimony at the preliminary injunction hearing suggested that the separation of the greyhound referendum from the mayoral election was at least in part

As a result of the passage of the Dog Racing Act, the Birmingham City Council adopted Resolution No. 1257-91 requesting the Jefferson County Commission to call a special election throughout the county on August 27, 1991 -- less than a month after the effective date of the Dog Racing Act -- "for the purpose of determining whether or not greyhound racing and pari-mutual wagering thereon shall be permitted in the part of the City located within the county." J.S. App. at A-39; *see* J.S. App. at A-9. The Jefferson County Commission then set the election for the requested date; the only other measure on the ballot concerned the renewal of certain *ad valorem* taxes. *Id.* at A-10.

Neither the State of Alabama nor the City of Birmingham nor the Jefferson County Commission -- each of which is a "covered jurisdiction" within the meaning of section 5 of the Voting Rights Act of 1965, *see* 28 C.F.R. Part 51, Appendix (1991) (entire state of Alabama is covered) -- sought preclearance pursuant to section 5 of any of the provisions of the Dog Racing Act or the local enabling measures.

Less than three weeks after the Dog Racing Act became law, appellant Cynthia Harris, a black resident of the Jefferson County portion of Birmingham and a registered voter -- along with a number of other plaintiffs whom the district court dismissed for lack of standing, *see* J.S. App. at A-16 to A-17 -- sought, in the United States District Court for the Northern District of Alabama, to enjoin the scheduled referendum for failure to receive preclearance. Pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284, a three-judge district court consisting of Circuit Judge Dubina, and District Judges Propst and

---

a tactical response to the fact that many black ministers opposed the authorization of pari-mutual wagering but supported the reelection of the incumbent black mayor, who supported racing. *See* Transcript of Preliminary Injunction Hearing at 32.

Nelson was designated to hear this case.

In her brief and at the hearing before the three-judge court, appellant claimed that six separate aspects of the Dog Racing Act and its local enabling legislation involved changes in "voting qualification[s] or prerequisite[s] to voting, or standard[s], practice[s], or procedure[s] with respect to voting," 42 U.S.C. § 1973c, and therefore required preclearance:

> (1) the limitation of the vote to Jefferson County residents of Birmingham and the exclusion of the city's Shelby County voters;
>
> (2) the newly enacted requirement to hold an election to consider greyhound racing;
>
> (3) the scheduling of the special election for August 27, 1991;
>
> (4) the prohibition on conducting the referendum in tandem with any mayoral or councilmanic election;
>
> (5) the failure to provide notice regarding the Act to voters in Shelby County; and
>
> (6) the actual language of the referendum question.

See J.S. App. at A-15 to A-16.

At the end of the hearing on August 22, 1991, the three-judge court dismissed all of appellant's section 5 claims. *See* J.S. App. at A-4 n.3. In its opinion, filed four days later, the district court expressly acknowledged that each of the challenged provisions was a "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," within the meaning of section 5. *See* J.S. App. at A-18. But it held that appellant had failed to provide credible evidence of

their "potential for discrimination." *Id.* at A-18 to A-19.

With regard to appellant's claim regarding the scope of the franchise, the court made the somewhat paradoxical "observation" that since Shelby County residents could not have voted in the 1984 *horse-racing* referendum, permitting Shelby County residents of Birmingham[6] to vote in the newly authorized 1991 *greyhound-racing* referendum would itself require preclearance. J.S. App. at A-19. Moreover, the court held, because the Shelby County portion of Birmingham is more than 98% white, its exclusion "could not possibly discriminate against blacks in Birmingham and Jefferson County." *Id.*

With regard to appellant's claims regarding the setting of the referendum, the three-judge court noted that the Attorney General's regulations required preclearance, *see* 28 C.F.R. § 51.17 (1991), but held that "[t]he plaintiffs have produced no evidence" of a potential for discrimination in the "mere" decision to conduct a referendum. J.S. App. at A-21. As to the actual date chosen, the court disposed of appellant's argument that the actual date chosen and the prohibition on holding the referendum in tandem with the mayoral and councilmanic elections would depress black turnout because it found that plaintiffs had "presented no firm credible evidence," while the defendants had presented testimony from a "leading black politician" who disputed the claim. *Id.* at A-22.

Finally, with regard to the actual form of the ballot question, the three-judge court again found preclearance not to be required because plaintiffs "have not presented

---

[6] There were no such persons in 1984, since Birmingham's annexation of property located in Shelby County did not occur until *after* the 1984 horse-racing referendum. *See* Code of Ala. § 11-65-1(3) (Michie 1991 Supp.).

any evidence from which the court could conclude that this change has any potential for discrimination on the basis of race or color." *Id.* at A-23.

In light of the three-judge court's opinion and order, the referendum went forward on August 27, 1991. The proposal was defeated. Pursuant to section 4(d) of the Dog Racing Act, Code of Ala. § 11-65-4(d), however, "[o]ne or more subsequent elections may be requested ... if the question submitted at the preceding election ... [did] not receive the required majority of votes cast ...."[7]

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Section 5 of the Voting Rights Act of 1965 as amended prohibits covered jurisdictions such as Alabama and political subdivisions within Alabama from "enact[ing]

---

[7] Because appellant challenged the underlying legislation -- the Dog Racing Act -- governing the conduct of greyhound-racing referenda in Birmingham, as well as the actual conduct of the August 27 election, her section 5 lawsuit was not rendered moot by the defeat of the referendum proposal. Thus, with the exception of appellant's challenge to the setting of the date of August 27, 1991, for the referendum, this case is very different from *Watkins v. Mabus,* 60 U.S.L.W. 3358 (Nov. 12, 1991) (No. 91-434), in which this Court dismissed, on *Munsingwear* grounds, Watkins' claim that section 5 required preclearance of absentee ballot procedures adopted for an election that had already been completed. In this case, by contrast, the procedures authorizing greyhound-racing referenda in Birmingham, restricting the scope of the franchise, setting out the form of the questions to be presented, and prohibiting such referenda to be conducted in tandem with mayoral or councilmanic elections remain on the books to govern future elections. In a sense, then, appellant's complaint is in no different position than it would have been had the Alabama Legislature not required the election to occur until 1992, and had appellant merely challenged the refusal to seek preclearance.

or seek[ing] to administer *any* voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964," 42 U.S.C. § 1973c (emphasis added), without first receiving preclearance of any change either from the United States District Court for the District of Columbia or the Attorney General.

Three aspects of section 5 are especially salient to this appeal. *First,* section 5 requires preclearance of "*any* State enactment which alter[s] the election laws of a covered State in even a minor way." *Allen v. State Board of Elections,* 393 U.S. 544, 566 (1969).

Second, section 5 permits local district courts only a strictly limited role: they are to decide whether a change must be submitted for preclearance (the so-called "coverage" question); they may not, however, decide whether a change actually has a discriminatory purpose or effect. The latter determination is reserved exclusively for the United States District Court for the District of Columbia or the Attorney General. *See, e.g., Conner v. Waller,* 421 U.S. 656, 656 (1975) (per curiam); *Perkins v. Matthews,* 400 U.S. 379, 384-86 (1971); *Allen v. State Board of Elections,* 393 U.S. at 561.

Third, section 5 places the burden on covered jurisdictions to prove that election-law changes do not have the purpose and will not have the effect of denying or abridging minority voters' right to vote; it does not place any burden regarding the purpose or effect of changes on affected voters. *See, e.g., McCain v. Lybrand*, 465 U.S. 236, 247 (1984); *United States v. Board of Commissioners*, 435 U.S. 110, 121 (1978); *Georgia v. United States*, 411 U.S. 526, 538 (1973).

In this case, the three-judge court flouted each of these well-established principles. Moreover, in reaching its clearly erroneous result, it also ignored the long-standing

administrative regulations of the Department of Justice which this Court has repeatedly held to be entitled to great deference. *See, e.g., NAACP v. Hampton County*, 470 U.S. 166, 178-79 (1985); *Dougherty County Board of Education v. White*, 439 U.S. 32, 39 (1978); *United States v. Board of Commissioners*, 438 U.S. at 131. Because the approach taken by the district court dramatically reinterprets the scope and operation of section 5, this case presents several substantial federal questions.

I. THE COURT BELOW CRITICALLY MISINTERPRETED THE SCOPE OF SECTION 5'S COVERAGE

As this Court has noted, section 5 was intended to reach *all* changes in voting qualifications, prerequisites to voting, or standards, practices, or procedures with respect to voting. *See, e.g., Dougherty County Board of Education*, 439 U.S. at 39; *Perkins v. Matthews*, 400 U.S. at 387-89; *Allen*, 393 U.S. at 568.

It cannot seriously be disputed that each of the provisions of the Dog Racing Act challenged in this lawsuit falls within the scope of section 5. Indeed, the district court acknowledged as much. *See* J.S. App. at A-18.

• The Dog Racing Act's limitation of the franchise in any election regarding greyhound racing within the City of Birmingham to only those city residents who were *also* residents of Jefferson County, thereby denying residents of the Shelby County portion of the city any vote in the referendum, obviously involves a "voting qualification." *See also, e.g., Dotson v. City of Indianola*, 521 F. Supp. 934, 943 (N.D. Miss. 1981) (three-judge court) (city's attempt not to permit residents of pre-cleared annexations to vote in an election constituted a "de-annexation" requiring preclearance under § 5), *aff'd*, 456 U.S. 1002 (1982); 28 C.F.R. §§ 51.13(a) (1991) (including among changes that

must be precleared "[a]ny change in qualifications or eligibility for voting"), 51.13(e) (1991) (including among changes requiring preclearance "[a]ny change in ... the boundaries of a voting unit (e.g., through ... annexation [or] deannexation")). Just as clearly, since there was *no* definition of the qualifications necessary to vote in Class 1 municipality greyhound-racing referenda prior to the passage of the Dog Racing Act, the definition of such qualifications is necessarily a "change" from the practices in effect on November 1, 1964.

• The decisions surrounding the setting of the date for the greyhound-racing referendum -- both those within the Dog Racing Act and those involving the choice among available dates by the Birmingham City Council and the Jefferson County Commission -- also undeniably involved voting "standard[s], practice[s], or procedure[s]" within the meaning of section 5. *See, e.g., Lucas v. Townsend,* 108 S. Ct. 1763, 1765 (1988) (Kennedy, J., in chambers) (enjoining bond election when date had not been precleared); *NAACP v. Hampton County,* 470 U.S. at 178 ("a change in the date of an election, if effected by statute, requires approval by the Attorney General under § 5"); *Garcia v. Guerra,* 744 F.2d 1159, 1164-65 (5th Cir. 1984) (explaining why new election schedules are covered by section 5), *cert. denied,* 471 U.S. 1065 (1985); *Busbee v. Smith,* 549 F. Supp. 494, 520 (D.D.C. 1982) (three-judge court) (conducting an election on dates other than those provided for in a pre-existing statute, is covered by section 5), *aff'd,* 459 U.S. 1166 (1983); 28 C.F.R. §§ 51.13(j) (1991) ("[a]ny change affecting the necessity of or methods for offering issues and propositions for approval by referendum"), 51.17(b) (1991) ("[a]ny discretionary setting of the date for a special election [described in § 51.17(a) as including "an initiative, referendum, or recall election"] ... is subject to the preclearance requirement"). Here, too, of course, the decision by the Alabama Legislature to require a referendum election, to outline the precise form that election should take, and to prohibit its being held

concurrently with other elections marked a "change" from pre-existing practice, since no election on this subject -- at any time involving any format -- was authorized prior to the passage of the Dog Racing Act. The same analysis applies to the decision by Birmingham and Jefferson County to set an election for August 27, 1991, when no election on that date had previously been authorized.

Under this Court's well-established analysis, the recognition by the district court that this case involved a section 5 challenge to as-yet unprecleared changes in voting qualifications and procedures should have ended its inquiry and led it to issue the requested injunction. *See, e.g., NAACP v. Hampton County*, 470 U.S. at 181; *McCain v. Lybrand*, 465 U.S. at 250 n. 17; *United States v. Warren County*, 429 U.S. 642, 644 n. 1 (1977); *Allen*, 393 U.S. at 558-59.

Instead, the district court totally misread this Court's analysis to hold that "[w]hether a specific change made by a covered political jurisdiction constitutes a change in a 'voting qualification or prerequisite to voting, or standard, or practice, or procedure with respect to voting' that is subject to the preclearance requirement of Section 5 turns on whether such a change has the 'potential for discrimination' against black persons," J.S. App. at A-12, in light of the facts presented by the plaintiffs in the case before it. In other words, the district court decided to consider whether *it* was convinced that "discrimination is a plausible consequence" of the challenged changes. *Id.* at A-10 and A-14 (internal quotation marks omitted).

That inquiry completely misses the mark. While this Court has explained section 5 coverage by pointing to the potential discriminatory consequences of the *type* of change at issue in various section 5 cases, it has *never* required plaintiffs to show that discrimination was in fact a "plausible" explanation for the changes. To the contrary, once it is clear that a challenged change falls into the

category of changes affecting voting, preclearance is required. Requiring plaintiffs in section 5 coverage cases to present facts regarding electoral circumstances in specific jurisdictions not only improperly relocates the burden of proof, *see infra* Part II, but also asks the local district court to do precisely what was forbidden by Congress -- that is, to determine whether a change was actually discriminatory. *See, e.g., Conner v. Waller,* 421 U.S. at 656.

In short, the "potential for discrimination" inquiry is a way of determining, with regard to a previously unaddressed type of statute, whether the change is a change "with respect to voting" (as opposed to a change affecting only things other than voting). It is *not* an additional hurdle that plaintiffs in section 5 coverage cases must surmount once they have shown that the change involved is a "voting" change.

The proposition that once it is clear a change involves voting its purpose and effect are irrelevant to the question of section 5 coverage was established as long ago as *Allen*. One of the provisions at issue in that case was a bulletin promulgated by the Virginia Board of Elections providing expanded assistance for voters who were otherwise unable to cast ballots because of illiteracy. This Court squarely held that the bulletin required preclearance, without inquiring at all into the purpose or impact of the new voter-assistance procedures:

> As in all these cases, we do not consider whether this change has a discriminatory purpose or effect. It is clear, however, that the new procedure with respect to voting is different from the procedure in effect when the State became subject to the Act; therefore, the enactment must meet the approval requirements of § 5 in order to be enforceable.

Allen, 393 U.S. at 570. Thus, the *Allen* Court utterly refused to ask whether it was "plausible" to believe that increased voter assistance had the purpose or effect of impairing the voting rights of Virginia's black citizens. Since the bulletin clearly *changed* those rights, preclearance was required. Similarly, in *NAACP v. Hampton County*, the Court did not decide that the change in the particular election date at issue in that case had to be precleared because that particular change was plausibly discriminatory. Rather, the Court simply delineated the reasons why changes in election dates *might, under certain circumstances*, be discriminatory. *See* 470 U.S. at 178. Having reached that conclusion, it held that preclearance was required in the case before it. As the Court explained:

> Pursuant to [the regulations in 28 C.F.R. Part 51], the Attorney General has, since 1980, reviewed approximately 58 changes in election dates .... *In none of these instances did the Attorney General advise the covered jurisdiction that its submission was not a "change"* and on several occasions objections were interposed.

NAACP v. Hampton County, 478 U.S. at 178-79 (emphasis added). In short, this Court's coverage decisions have been "categorical," that is, intended to govern *all* cases involving similar changes, regardless of the precise factual circumstances in the covered jurisdictions. *See also, e.g., Georgia v. United States,* 411 U.S. at 533 (noting, in a reapportionment case from Georgia "the decisiveness with which *Allen* [an earlier case involving claims of vote dilution in Mississippi] controls this case"). And every year, the Attorney General examines, and preclears, literally hundreds of voting changes that are clearly ameliorative -- such as expanding registration opportunities or polling hours.

Thus, the decision below announced a novel and

insupportable substantive test in section 5 coverage cases. Its analysis is so contrary to precedent and devoid of merit that summary reversal might well be appropriate.

Not only is this new substantive test completely unjustifiable, it also threatens a fundamental, and destructive, sea-change in the entire section 5 preclearance scheme, including this Court's role. As this Court recognized last Term in *Clark v. Roemer,* 111 S. Ct. 2096, 2104 (1991), jurisdictions have a responsibility "for self-monitoring under § 5," which places the duty on them to seek preclearance. Under the district court's approach in this case, that self-monitoring responsibility is gone: rather than being obligated to respect Congress' intention that "all changes, no matter how small, be subjected to § 5 scrutiny," *Allen*, 393 U.S. at 568, a jurisdiction is now presented with an incentive "to forgo the preclearance process altogether," *Clark*, 111 S. Ct. at 2104, whenever *it* concludes that its changes are not discriminatory.

Previously, it would have been clear to any moderately well-informed state or local government legal official that reapportionments, annexations, changes in voting procedures, restrictions on candidacy, or changes in the date of elections required preclearance. Thus, law-abiding jurisdictions would simply have submitted such changes to the Attorney General (or, in a few cases, would have sought a declaratory judgment from the United States District Court for the District of Columbia). The Attorney General's enforcement responsibilities would have been minimal, and the burden on the federal judicial system would have been correspondingly minor.[8] In particular, the burden on this Court, to which direct appeal is

---

[8] Since the Attorney General's decision to preclear a submitted change is not reviewable, *see Morris v. Gressette,* 432 U.S. 432 U.S. 491 (1977), the vast bulk of submissions are never presented to any section 5 court, since they receive administrative preclearance.

authorized on both section 5 coverage and section 5 substance issues, was kept relatively light. If jurisdictions are given discretion whether to submit changes, however, many are likely to decide to forego the process. Indeed, under the district court's interpretation, it would constitute legal error for a jurisdiction that does not believe that discrimination is a "plausible consequence" of a change to submit the change, since the change is not covered. This increases the likelihood that section 5 enforcement actions will have to be brought, and that disappointed parties will seek plenary review in this Court. Given that there are upwards of 17,000 submitted changes each year, *see Clark*, 111 S. Ct. at 2104, even a one percent decrease on the proportion of changes submitted to the Attorney General poses the potential of confronting this Court with enough section 5 mandatory appeals to completely occupy the Court's entire argument calendar year in and year out. The time to make clear that entire categories of election law changes must be submitted for preclearance is now.

II. THE COURT BELOW COURT BELOW APPLIED THE WRONG BURDEN OF PROOF TO THE WRONG ISSUE

One thing has been clear about section 5 since its enactment: section 5's central goal was "to shift the advantage of time and inertia from the perpetrators of the evil [of discrimination in voting] to its victims." *South Carolina v. Katzenbach*, 383 U.S. 301, 328 (1966). A key aspect of this shift lies in the location of the burden of proof. As this Court noted in *Georgia v. United States*, 411 U.S. at 538, n.9 (internal quotation marks omitted):

> The very effect of § 5 was to shift the burden of proof with respect to racial discrimination in voting. Rather than requiring affected parties to bring suit to challenge every

> changed voting practice, States subject to § 5 were required to obtain prior clearance before proposed changes could be put into effect. The burden of proof is on the areas seeking relief.

Thus, whenever a jurisdiction wishes to make a change, "*it* must first demonstrate to a federal instrumentality that the change will be nondiscriminatory." *United States v. Board of Commissioners*, 435 U.S. at 121 (emphasis added). As this Court explained in *McCain v. Lybrand*, 465 U.S. at 256:

> The fact that a covered jurisdiction adopted a new election practice after the effective date of the Voting Rights Act raises, in effect, a statutory inference that the practice may have been adopted for a discriminatory purpose or may have a discriminatory effect and places the burden on the jurisdiction to establish that the practice is not discriminatory.

Despite these repeated and unambiguous directives, the district court in this case placed the burden on the plaintiffs to show that the challenged changes were in fact discriminatory. *See, e.g.*, J.S. App. at A-19 to A-20 (discussing how, given the relative racial breakdowns of Birmingham residents in Jefferson and Shelby Counties, it did not see a potential racially discriminatory impact);[9] *id.* at A-21 (rejecting section 5 coverage for the referendum

---

[9] In *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987), this Court upheld the *denial* of preclearance -- which *a fortiori* represents a requirement that preclearance be sought -- of an annexation of essentially uninhabited territory by a virtually all-white Alabama municipality because the municipality had not met its burden of proving that the annexation was not undertaken for a discriminatory purpose. If annexation by an all-white jurisdiction requires preclearance as a change affecting voting, then clearly this case falls within the preclearance requirement.

requirement, despite its recognition that the Attorney General's regulations would require submission because "[t]he plaintiffs have produced no evidence" of discrimination); *id.* at A-22 (rejecting section 5 preclearance for the actual date selected, again despite this Court's clear holdings to the contrary in *Lucas* and *Hampton County* and the Attorney General's regulations because plaintiffs "presented no firm credible evidence" of the likelihood decreased black turnout)[10]; *id.* at A-23 (exempting the referendum date from preclearance in part because Birmingham's city council, which is majority black, and Birmingham's mayor, who also is black, approved the date).[11] The district court's repeated references to whether the plaintiffs had shown discrimination to be a "plausible consequence" of the challenged changes shows that it simply ignored the statutory inquiry: it both relieved the jurisdiction of the congressionally mandated burden of proof and decided the wrong issue.

III. THE COURT BELOW MISUNDERSTOOD ITS STATUTORILY LIMITED ROLE

But even if the district court *had* properly placed the burden of proving nondiscrimination on the defendants, it would have committed a critical legal error. That inquiry is reserved by law solely for the Attorney General and for the United States District Court for the District of Columbia. That the district court fundamentally

---

[10] In *Hampton County*, the speculative possibility of such decreased turnout was enough, without any specific evidence, for this Court to require preclearance. *See* 470 U.S. at 178.

[11] In *Castaneda v. Partida*, 430 U.S. 482, 499 (1977), this Court cautioned against inferring a lack of discrimination simply from the fact that members of the protected class served on the official body that made the policy.

misunderstood its role is demonstrated by its response to appellant's motion for reconsideration:

> If the calling of any election, without regard to any "potential for discrimination," was subject to § 5 preclearance, there could never be any place for a three-judge court to exercise any judgment. The question for the court would always be only, "Is there an election and is there any change, no matter how insubstantial such change might be, from previous similar elections?"

J.S. App. at A-27. The limited role that the district court emphatically rejects is, however, *precisely* the role Congress gave it. Local district courts in section 5 coverage cases are expressly forbidden from exercising "judgment" as to whether a change is discriminatory, and as to whether a defense witness' statements regarding the purpose and effect of a change are "credible."[12] This Court and Congress have repeatedly made clear that the *sole* task of local district courts is to determine whether the challenged law is a "voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964

---

[12] The repeated references to whether evidence was "credible," *see, e.g.*, J.S. App. at A-18, A-25, A-27, and A-28, and the reliance on testimony "disput[ing] the claim" of discriminatory impact, J.S. App. at A-22, shows how the court below reached out to decide an issue over which it had no jurisdiction: whether the changes here were actually discriminatory. Credibility determinations simply have no place in deciding the *only* questions properly before the court below: whether the challenged parts of the Dog Racing Act and City Council resolutions involved "qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," 42 U.S.C. § 1973c, and, if they did, whether they involved changes in pre-existing rules. None of the analysis or testimony relied on by the district court disputed either of these propositions, and thus none of the analysis or testimony justified the result that court reached.

...." 42 U.S.C. § 1973c. If it is, the local district court's job is at an end: it *must* require preclearance.

The "potential for discrimination" language in this Court's opinions in *Hampton County*, *Dougherty County Board of Education*, *Perkins v. Matthews*, and *Allen* simply does not bear the tortuous construction forced upon it by the court below. In each of those cases -- which all involved this Court in deciding for the first time whether a particular change fell within the *category* of changes requiring preclearance -- this Court made clear that it was not deciding the ultimate question of discrimination, but simply requiring the covered jurisdiction to seek preclearance. And in each of those cases, this Court required submission for preclearance. The decision in this case, by contrast, uses the concept of "potential for discrimination" to pretermit submission altogether. That is a completely unprecedented, and unacceptable, reading of a statute whose language is clear.

CONCLUSION

For the reasons stated above, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

PAMELA S. KARLAN
Counsel of Record
University of Virginia
School of Law
Charlottesville, Va. 22901
(804) 924-7810

ROSE M. SANDERS
Chestnut, Sanders, Sanders
& Pettaway, P.C.
P.O. Box 1305
Selma, Alabama 36702-
(205) 875-9264

Attorneys for Appellants

Appendix

CONTENTS OF APPENDIX

Page

Opinion and Order, Aug. 26, 1991 ..... A-2

Order (denying Motion to Reconsider)
Sept. 19, 1991 ..... A-24

Statutory Provisions Involved

Section 5 of the Voting Rights
Act of 1965, 42 U.S.C. § 1973c A-29

Relevant Portions of the Alabama
Dog Racing Act of 1991

Code of Ala. § 11-65-1(14)
(Michie 1991 Supp.) A-31

Code of Ala. § 11-65-2(a)(18)
(Michie 1991 Supp.) A-31

Code of Ala. § 11-65-4(b), (c), and (d)
(Michie 1991 Supp.) A-32

Birmingham City Council Resolution 1257-91 .. A-37

Notice of Appeal, Oct. 17, 1991 ..... A-41

OPINION AND ORDER, AUG. 26, 1991

United States District Court
Northern District of Alabama
Southern Division

The Greene County Racing Commission *et al.*,	]	
Plaintiffs,	]	
vs.	]	CV-91-N-1930-S
The City of Birmingham, *et al.*,	]	
Defendants.	]	

BEFORE DUBINA, Circuit Judge and PROPST and NELSON, District Judges.

NELSON, District Judge:

I. STATEMENT OF THE CASE

The Voting Rights Act of 1965, 42 U.S.C. § 1973, *et seq.*, (the Voting Rights Act) prohibits any state or political subdivision of a state from imposing or applying any "qualification or prerequisite to voting or standard, practice, or procedure ... which results in a denial of abridgement of the right of any citizen ... to vote on

account of race or color." 42 U.S.C § 1973.[1] Section 5 of the Voting Rights Act provides that when certain states and political subdivisions designated by the United States Attorney General[2] "shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, or practice, or procedure with respect to voting different from that in force or effect on November 1, 1964 ... no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure" unless and until such state or political subdivision shall have sought and obtained a declaratory judgment in the United States District Court for the District of Columbia "that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c. Alternatively, the affected state or political subdivision may preclear any proposed change by submitting it to, and securing the approval of, the United States Attorney General. *Id.*

In this civil action the plaintiffs claim the defendants did not preclear certain alleged changes in voting procedures to be used in connection with a public referendum. They seek injunctive and declaratory relief to

---

[1] The Voting Rights Act of 1965 was enacted to effectuate the provisions of the Fifteenth Amendment to the United States Constitution and to insure that no citizen's right to vote is denied or abridged on account of race or color. *NAACP v. New York*, 413 U.S. 345, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973).

[2] The entire State of Alabama has been designated by the Attorney General as subject to the provisions of the Voting Rights Act of 1965. 28 C.F.R. Part 51, Appendix.

prevent the defendants from conducting a referendum among the voters of Jefferson County, Alabama, on Tuesday, August 27, 1991, to determine whether greyhound racing and pari-mutuel wagering thereon will be legalized in that county.[3] The plaintiffs are: the Greene County Racing Commission, a public corporation formed for the purpose, *inter alia*, of regulating greyhound racing and pari-mutuel wagering in Greene County, Alabama; the Greene County Board of Education, a beneficiary of certain income from the proceeds derived from pari-mutuel wagering on greyhound racing in Greene County, Alabama; the Greene County Commission, the governing body of Greene County, Alabama; and Cynthia Harris, a registered voter in Birmingham, Jefferson County,

---

[3] The complaint, filed on Thursday, August 15, 1991, contains, in addition to this claim under the Voting Rights Act, a number of claims under the constitution and laws of the State of Alabama and the federal constitution. Pursuant to the provisions of 42 U.S.C. § 1973c and 28 U.S.C. § 2284, Chief Judge Gerald B. Tjoflat designated Circuit Judge Joel F. Dubina and District Judge Robert B. Propst to serve with the undersigned as a three-judge court to hear and determine the claims under Section 1973c. The three-judge court conducted a final hearing on the merits of the Voting Rights Act claims on Thursday, August 22, 1991, and Judge Dubina, at the close of that hearing, announced that the court would deny the motion for interlocutory relief. This opinion and order will dispose of the claims under the Voting Rights Act on the merits.

State law claims and federal constitution claims are not before the three-judge court. By separate order, the district judge to whom this action was assigned has dismissed all state law claims under the provisions of 28 U.S.C. § 1367, as amended. The federal constitutional claims remain pending before the single-judge court.

Alabama.[4] The defendants are: the City of Birmingham, Alabama; the Jefferson County Commission, the governing body of Jefferson County, Alabama; the Birmingham Racing Commission, a public corporation organized and empowered to regulate thoroughbred horse racing and pari-mutuel wagering thereon in Birmingham, Alabama; Birmingham Sports Management and Milton McGregor, a corporation and one of this principal shareholders.[5]

The requested relief will be denied and the Voting Rights Act claims will be dismissed with prejudice.

II. THE FACTS

Except to the extent that it is authorized by specific statute, gambling, including pari-mutuel wagering on horse racing and greyhound racing, is prohibited in the State of Alabama as being in violation of the state's criminal code.

---

[4] The original plaintiff was Randy Gann, a registered voter in Shelby County, Alabama. On the morning of the hearing the court permitted Mr. Gann to withdraw. Plaintiff Cynthia Harris was allowed to intervene.

[5] The Voting Rights Act limits State governments and their political subdivisions. Neither Birmingham Sports Management nor Milton McGregor is a state or political subdivision of a state. There is no claim that either is or has threatened to conduct any election or voting activity on behalf of a state or political subdivision. Neither is a proper defendant in an action brought to enforce provisions of the Voting Rights Act.

(*Ala. Code §§* 13A-12-20 to -31 (1975).[6] The Greene County Racing Commission and pari-mutuel wagering on greyhound racing were authorized by Act No. 75-376 on September 19, 1975 and a greyhound racing facility apparently has operated in Greene County for a number of years. In 1984 the Alabama legislature authorized the establishment of a racing commission in the City of Birmingham and also legalized horse racing and pari-mutuel wagering on such horse racing in that city. 1984 Ala. Acts 159 (codified at *Ala. Code* § 11-65-1 *et seq*) (Horse Racing Act) The Horse Racing Act provided that it would be effective only if horse racing and pari-mutuel wagering thereon were approved at an election conducted in the City of Birmingham and in the county or counties in which the City, "or any part thereof," was located. The act further required approval by both "a majority of all the voters casting votes in such referendum and ... a majority of the voters casting votes in such referendum who reside in the [City of Birmingham]" before it could become effective. *Ala. Code,* § 11-65-46. At an election conducted on June 12, 1984, majorities of the voters in Jefferson County and in Birmingham approved the establishment of

---

[6] *Ala. Code* § 13A-12-31 provides:

> The provisions of this article [relating to the suppression of gambling places] shall not apply to pari-mutuel betting at race meetings authorized by statute. All presently effective state statutes and laws and locally adopted ordinances and laws pursuant thereto legalizing, authorizing or allowing greyhound races and betting and wagering thereon are hereby expressly and specifically preserved, saved and excepted from any repealer provisions contained anywhere in the Criminal Code.

the Birmingham Racing Commission and horse racing with pari-mutuel wagering. (Defendants' Exhibit 2) Under the provisions of the Horse Racing Act, the Birmingham Racing Commission issued a license for the ownership of a horse racing facility located in Birmingham, Alabama and an operator's license to conduct horse racing and pari-mutuel wagering thereon at such racing facility. The holders of those licenses and related interests constructed a horse racing facility and instituted a horse racing program including pari-mutuel wagering.

Horse racing in Birmingham proved to be an economic failure and the original holder of the licenses eventually sought the protection of the bankruptcy laws on the United States. Through an arrangement not entirely clear from the record, but seemingly with the approval of the bankruptcy court, a second horse racing operator was permitted to conduct horse racing and pari-mutuel betting operations at the racing facility. It, too, was an economic failure. According to legislative findings made in 1991, the original holder of the licenses and its successor incurred total losses of $22,500,000 from the time the track opened until horse racing ended there in 1990. Act of July 28, 1991, No. 187, § 1; Plaintiffs' Exhibit 4.

At the time Act No. 84-131 was enacted, the City of Birmingham was situated entirely in Jefferson County, Alabama, and the referendum on the approval of horse racing and pari-mutuel betting was limited to that county. The City has since extended its boundaries by annexation into neighboring Shelby County.

At his regular session in 1991, the legislature

enacted Act No. 91-187 (Dog Racing Act)[7] which substantially amended Act No. 84-131, *inter alia*, to authorize greyhound racing and pari-mutuel betting thereon in the City of Birmingham.[8] Issues have been raised under the Voting Rights Act with regard to a number of passages and provisions in Act No. 91-187. Section 4(b)[9] of the act, amending *Ala. Code* § 11-65-4,

---

[7] Act No. 91-187 was allowed to become law on July 28, 1991 without the signature of the governor. (Plaintiffs' 4)

[8] Both of the relevant acts, Act No. 84-131 and Act No. 91-187, speak of authorizing racing and pari-mutuel betting in "Class 1 Municipalities." A Class 1 Municipality is defined as a city of 300,000 or more inhabitants according to the 1970 census. *Ala. Code* § 11-40-12. Birmingham was and is the only Class 1 Municipality in the State of Alabama. The legislature has chosen to describe the city to which Acts 84-131 and 91-187 are applicable in terms other than by name in order to comply with certain provisions of the Alabama constitution having to do with local versus general laws. The court is no so constrained and, accordingly, will refer to the applicable city by its name.

[9] Section 4 of the Dog Racing Act, *Ala. Code* § 11-65-4, as amended, makes provisions for the holding of elections at which the voters of a Class 1 Municipality and of the county in which the majority of the people of the city reside must approve before racing and pari-mutuel betting will become legal. Section 4 (a), clearly, applies only to Class 1 Municipalities in which no racing commission, horse or dog racing, or pari-mutuel wagering existed before the enactment of Act No. 91-187. On the other hand, Section 4 (b) was intended to apply in Class 1 Municipalities which had previously authorized either horse racing and pari-mutuel betting or greyhound racing and pari-mutuel betting. Birmingham and Jefferson County did, in fact, conduct a referendum in 1984 at which horse racing and pari-mutuel betting were approved. Therefore, only Section 4 (b) applies to Birmingham and Jefferson County. Section 4 (a) was

provides that where an election has previously been held "that authorized either horse racing and pari-mutuel wagering thereon or greyhound racing and pari-mutuel wagering thereon, but not both such racing activities," as it has in Birmingham, the City is "mandated" to call an election prior to January 1, 1992, "to determine whether greyhound racing and pari-mutuel wagering thereon shall be permitted in [Birmingham.]"[10] Section 4(b) further provides that no voters who live outside Jefferson County shall be permitted to vote in the referendum. No election called for the purpose of considering either horse racing or greyhound racing may be "held on the date [the City of Birmingham] holds an election for its mayor or for two or more members of its governing body." Act of July 28, 1991, No. 187, § 4(c); Plaintiffs' Exhibit 4.

The mayor of Birmingham recommended, and its council adopted, Resolution No. 1257-91 by which the Jefferson County Commission was requested to call an "election to be held throughout the county on August 27, 1991, for the purpose of determining whether or not greyhound racing and pari-mutuel wagering thereon shall be permitted in the part of the City located within the County." (Defendants' Exhibit 2) As requested, the Jefferson County Commission promptly set the elect for August 27, 1991. The question to be presented to the

---

apparently included to maintain the legal fiction that there is some possibility of Class 1 Municipalities in Alabama other than the city of Birmingham. Of course, that possibility exists only in *Ala. Code* § 11-40-12 is amended to change the definition of a Class 1 Municipality.

[10] The Act provides that "the governing body of [the city of Birmingham] shall determine the date of such election." Act of July 28, 1991, No. 187 § 4(b).

voters is:

> Do you favor the authorization of greyhound racing and pari-mutuel wagering thereon in that part of the City of Birmingham located in Jefferson County, as provided in Chapter 65, Title 11, Code of Alabama 1975? (Plaintiffs' Exhibits 2 and 3)

The only other measures on the ballot in any part of the county concern the renewal of certain ad valorem taxes dedicated to public school use. There are no candidates for public office listed on any ballot in the county. The greyhound racing question is not on the ballot to be used in that part of Birmingham that is situated in Shelby County, Alabama. (Plaintiffs' Exhibit 1)

Approximately one week before the scheduled vote the relevant voter roles [*sic*] reflected the following with regard to total voters and the racial composition of the electorate:

	Total	White	%	Black	%
Jefferson County	344,468	234,264	67.9	102,282	32.1
Birmingham/Jefferson County	133,977	53,810	40	75,300	60
Shelby County	56,150	51,879	92.4	3,854	7.6
Birmingham/Shelby County	82	81	98.78	1	1.22

(Defendants' Exhibit 1; Joint Exhibit 2)

III. DISCUSSION OF THE ISSUES.

A. The Voting Rights Act

Section 5 of the Voting Rights Act requires a covered jurisdiction, before implementing a change in voting procedures, to preclear that change either judicially or administratively and no such change "will be effective ... until and unless cleared" by one of the two statutorily provided methods. *Conner v. Waller*, 421 U.S. 656, 95 S. Ct. 20003, 44 L.Ed.2d 486 (1975) (per curiam). *See also United States v. Board of Supervisors*, 429 U.S. 642, 645, 97 S.Ct. 833, 51 L.Ed.2d 106 (1977); *Hathorn v. Lovorn*, 457 U.S. 255, 269, 102 S.Ct. 2421, 72 L.Ed.2d 824, *reh'g denied*, 458 U.S. 1131, 103 S.Ct. 15, 73 L.Ed.2d 1401 (1982). The court's consideration of these claims is more sharply focuses by prior interpretations of the Act from the Supreme Court and other lower federal Courts. Congress intended that the Voting Rights Act be given "the broadest possible scope." *Allen v. State Board of Elections*, 393 U.S. 544, 567, 89 S.Ct. 817, 832, 22 L.Ed.2d 1 (1969). The Court in *Allen* concluded further "that Congress intended to reach any state enactment which altered the election law of a covered State in even a minor way." *Id.* at 566. The act "was aimed at the subtle, as well as the obvious ...." *Id.* at 565.

Whether a specific change made by a covered political jurisdiction constitutes a change in a "voting qualification or prerequisite to voting, or standard, or practice, or procedure with respect to voting" that is subject to the preclearance requirement of Section 5 turns

on whether such a change has the "potential for discrimination" against black persons. *NAACP v. Hampton County Election Comm'n,* 470 U.S. 166, 181, 105 S.Ct. 1128, 1137, 84 L.Ed.2d 124 (1985). The court is required to give considerable deference to interpretations of the Voting Rights Act by the Attorney General. *United States v. Board of Comm'rs,* 435 U.S. 110, 131 98 S.Ct. 965, 979, 55 L.Ed.2d 148 (1978); *Hardy v. Wallace,* 603 F. Supp. 174, 177 (N.D. Ala. 1985) (three-judge court) (Vance, J.).[11]

---

[11] The Attorney General has determined that certain types of changes affect voting for purposes of the Voting Rights Act. Examples of such changes are:

> Changes affecting voting include, but are not limited to, the following examples:
>
> (a) Any change in qualifications or eligibility for voting.
>
> (b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.
>
> (c) Any change with respect to the use of a language other than English in any aspect of the electoral process.
>
> (d) Any change in the boundaries of voting precincts or in the location of polling places.
>
> (e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

The function of this three-judge court is limited. We may not inquire into the discriminatory purpose or effect of the changes. *Perkins v. Matthews,* 400 U.S. 379, 91 S.Ct. 431, 27 L.Ed.2d 476, (1971).

> The only questions to be decided by ... the three judge court ... is whether or not the State or Mississippi or any of its political

---

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or retain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment, or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

28 C.F.R. § 51.13.

> subdivisions have acted in such a way as to cause or constitute a voting qualification or prerequisite to voting or standard, practice or procedure with respect to voting within the meaning of Section 5 of the Voting Rights Act of 1965, which changed the situation that existed as of November 1, 1964, and whether or not prior to doing so the City had filed a request for declaratory judgment with the United States District Court for the District of Columbia or asked approval of the Attorney General of the United States ....

Perkins, 400 U.S. at 384. (quoting the unreported oral opinion of the district judge to whom the case was first assigned). While the court may not inquire into any discriminatory purpose or effect of challenged changes, it must examine the fact with a view toward deciding whether "discrimination is a 'plausible consequence' of the change." *Hawthorne v. Baker,* 750 F. Supp. 1090, 1095 (M.D. Ala. 1990) (three-judge court) (Thompson, J.) (quoting *Turner v. Webster,* 637 F. Supp. 1089, 1092 (Ala.) (three-judge court) (Vance, J.) *See NAACP v. Hampton County Election Comm'n,* 470 U.S. at 181; *McCain v. Lybrand,* 465 U.S. 236, 104 S.Ct. 1037, 79 L.Ed.2d 271 (1984); *Dougherty County, Georgia Bd. of Educ. v. White,* 439 U.S. 32, 99 S.Ct. 368, 58 L.Ed.2d 269 (1978); *Georgia v. United States,* 411 U.S. 526, 93 S.Ct. 1702, 36 L.Ed.2d 472 (1973); *Perkins v. Matthews,* 400 U.S. at 383-385; *Allen v. State Bd. of Elections,* 393 U.S. at 555.

B. The Claims.

The district judge to whom the action was initially assigned perceived two potential grounds for the plaintiffs' claim that the Dog Racing Act could not be implemented until it has been precleared under Section 5 of the Voting Rights Act: (1) the act excluded voters of that part of Birmingham situated in Shelby County and (2) it excluded all the voters of Shelby County from participation in the referendum to consider the question of dog racing in Birmingham. On Friday, August 16, 1991, the court entered an order scheduling the hearing on the motion for interlocutory relief and directing the plaintiffs to file a brief "setting forth each issue to be heard at the ... hearing." In their brief, the plaintiffs stated they would pursue three claims at the hearing. They were (1) by limiting voting to Birmingham residents who live in the Jefferson County portion of the City, Birmingham residents of the Shelby County portion of the City have been "de-annexed": (2) the holding of an election to consider dog racing and pari-mutuel betting it itself a change from practices and procedures as they existed on November 1, 1964; and (3) the scheduling of a special election is a change requiring preclearance. By the time of the hearing, one day after the brief was filed, the plaintiffs had expanded their allegations to include claims that: (4) the prohibition on conducting the referendum in conjunction with the election of the mayor or two city council members had the potential to adversely effect [*sic*] black voters; (5) the date was selected to coincide with the beginning of the school year and would impact on the ability of black voters to get to the polls; (6) failure to give legal notice to the voters of Shelby County concerning the proposed

enactment of the Dog Racing Act was a change from prior law; and (7) the question to be presented on August 27 is a change from the question presented in connection with the Horse Racing Bill because it does not include any question concerning the establishment of a racing commission.

C. Plaintiffs' Standing

At the beginning of the hearing, the plaintiffs conceded that none of the plaintiffs except Cynthia Harris have standing to bring these claims under Section 5 of the Voting Rights Act. Because the jurisdiction of federal courts is limited to actual "cases" and "controversies" this court can adjudicate only the "legal rights" of litigants. *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration,* 113 U.S. 33, 5 S.Ct. 352, 28 L.Ed. 899 (1885). A plaintiff has no standing to bring an action unless he can "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700, 709 (1982) (quoting *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91, 99, 99 S.Ct. 1601, 60 L.Ed.2d 66 (1979)). The plaintiff must also demonstrate that the injury "fairly can be traced to the challenged actions" and "is likely to be redressed by a favorable decision." *Valley Forge College,* 454 U.S. at 472 (quoting *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 38, 96 S.Ct. 1917, 48 L.Ed.2d 450 (1976)). The Supreme Court has said:

> The requirement that a party seeking review must allege facts showing that he is himself adversely affected ... does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome.

Sierra Club v. Morton, 405 U.S. 727, 740, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972).

None of the plaintiffs associated with Greene County has alleged any actual or threatened injury fairly traceable to the challenged conduct of the defendants. Those plaintiffs have alleged nothing more than the potential for economic injury traceable only to the perceived competition to be created by the existence and operation of a greyhound racing facility in Birmingham, Alabama. That is not a denial or abridgement of the right to vote on account or race or color or otherwise. These plaintiffs having suffered no actual or threatened injury from the conduct of the defendants, the Voting Rights Act claims of the Greene County Racing Commission, the Greene County Board of Education, and the Greene County Commission will be dismissed with prejudice.

The remaining plaintiff is Cynthia Harris, a registered voter who lives in the Jefferson County portion of the City of Birmingham. As such resident there can be no serious question concerning Ms. Harris' standing to raise at least some of the Section 5 claims. For example, had Ms. Harris proved that the selection of August 27, 1991, had the potential for discrimination on the basis of race or color, she would clearly have a stake in the

outcome of this action and would be in a position to benefit from a favorable ruling of the court. Ms. Harris' standing to raise other claims is less clear. It is difficult to see how she has been adversely affected by the exclusion of Shelby County voters from the referendum. However, since Ms. Harris has standing as to some claims and the others are insubstantial, it is not necessary that the court determine the parameters of her standing with great precision. Accordingly, the court will consider each of the grounds alleged in support of the claim for injunctive and declaratory relief.

D. Discussion of the Claims.

The plaintiff Harris is entitled to relief only if "discrimination is a 'plausible consequence' of the change." *Hawthorne v. Baker,* 750 F. Supp. at 1095; *NAACP v. Hampton County Election Comm'n,* 470 U.S. at 181; *McCain v. Lybrand*, 465 U.S. 236 (1984); *Dougherty County, Georgia Bd. of Educ. v. White,* 439 U.S. 32 (1978); *Georgia v. United States,* 411 U.S. 526 (1973); *Perkins v. Matthews*, 400 U.S. at 383-385; *Allen v. State Bd. of Elections,* 393 U.S. at 555. This minimal requirement has been spoken of in terms of the "potential for discrimination." *NAACP v. Hampton County Election Comm'n,* 470 U.S. at 181. While the necessary showing is slight, it "cannot be treated as so minimal as to write this requirement completely out of existence." *Hawthorne v. Hurley,* 756 F. Supp. 527, 531 (M.D. Ala. 1990) (three-judge court) (Thompson, J.). In this case, the plaintiffs have failed to offer any credible evidence that any one of the challenged practices, qualification or prerequisites to voting has any potential

for discrimination on the basis of race or color.

The original claims made by these plaintiffs focused strongly on the exclusion of Shelby County voters from the election. Indeed, the only plaintiff at the time who possibly had standing, Randy Gann, was alleged to be a registered voter in Shelby County.[12] With regard to the claims that the exclusion of Shelby County voters, either those living inside or outside Birmingham, constitute changes requiring preclearance before they can be implemented, the court makes several observations. First, no voter in Shelby County was qualified or permitted to vote in the referendum conducted under the Horse Racing Act on June 12, 1984 and to permit them to vote now would likely be a change subject to scrutiny under the Voting Rights Act. Second, 92.4% of the voters of Shelby County are white and 7.6% are black. The Jefferson County voting population is 67.9% white and 32.1% black. These figures suggest that the exclusion of the Shelby County voting population could not possibly have any discriminatory purpose or effect with regard to black voters in Birmingham or Jefferson County. In the Shelby County portion of Birmingham, 98.78% of the voters are white and 1.22% are black. As with the general population of Shelby County, the exclusion of a voting population that is more than 98% white could not possibly discriminate against blacks in Birmingham and Jefferson County. The court notes that no potential voter from

---

[12] The court notes that though one claim raised in the original complaint, and pressed at the hearing, was that the Shelby County portion of Birmingham was "de-annexed" for purposes of the Dog Racing Bill, Mr. Gann's name does not appear on the list of registered voters in that portion of Birmingham. (Defendants' Exhibit 1)

Shelby County has claimed that the conduct of this referendum has the potential to discriminate against him.

The plaintiffs, in related claims, assert that the setting of the referendum and the setting of a special election each require preclearance under Section 5. At 28 C.F.R. § 51.17, the Attorney General has determined that special elections are subject to preclearance "to the extent that the jurisdiction makes changes in the practices or procedures to be followed."[13] While the regulation might suggest on its face, that every special election requires preclearance, the cases have consistently held that the plaintiff must still make a minimal showing of a potential for discrimination. *See NAACP v. Hampton County Election Comm'n,* 470 U.S. at 181; *McCain v. Lybrand,* 465 U.S. 236 (1984); *Dougherty County, Georgia Bd. of Educ. v. White,* 439 U.S. 32 (1978); *Georgia v. United States,* 411 U.S. 526 (1973); *Perkins v. Matthews,* 400 U.S. at 383-385; *Allen v. State Bd. of Elections,* 393 U.S. at 555; *Hawthorne*

---

[13] 28 C.F.R. § 51.17 provides in pertinent part:

> (a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.
>
> (b) Any discretionary setting of the date for a special election or scheduling of events leading up to or following a special election is subject to the preclearance requirement.

28 C.F.R. § 51.17.

v. Baker, 750 F. Supp. at 1095. The regulation requires preclearance only where changes have a potentially discriminatory purpose or effect. The plaintiffs have produced no evidence that the mere setting of the dog racing referendum has the potential of discrimination on the basis or race, color or otherwise.

Next, the plaintiffs assert that the date selected for the referendum and the restrictions on the date to be selected represented changes having the potential for discrimination and that preclearance is required. The date selected for an election can give rise to a preclearance requirement under Section 5. *NAACP v. Hampton County Election Comm'n,* 470 U.S. 166; *Lucas v. Townsend,* 486 U.S. 1301, 108 S.Ct. 1763, 100 L.Ed.2d 589 (1988) (opinion in chambers, Kennedy, J.); *Hawthorne v. Hurley,* 756 F. Supp. 527 (M.D. Ala. 1990), *vacated*, 111 S.Ct. 1408, 113 L.Ed.2d 440.[14] Both *NAACP v. Hampton County Election Commission* and *Lucas v. Townsend* involved actual changes in previously established elections dates and were predicated upon findings that the changes has the "potential for discrimination." In *Hawthorne v. Hurley,* the court considered an actual change in the date for a special meeting of the Alabama State Democratic Committee to select new black members but concluded that there was "no indication whatsoever that [blacks] will in any way be disadvantaged" by the change in the meeting date. *Hawthorne v. Hurley,* 756 F. Supp. at 531.

The plaintiffs claim, first, that by forbidding local

---

[14] That *Hawthorne* was later dismissed as moot does not diminish its persuasive value. The court cites it merely to illustrate the manner in which similar claims have been treated.

officials from setting the referendum on the same date that Birmingham's mayor or at least two of its council members were being elected, the Dog Racing Act has the effect of discouraging voters from participating in the election. Only inferentially do they argue that this factor would have a greater impact on black voters than it would have on white voters. They presented no firm credible evidence to support the claim. On the contrary, the leading black political in the City of Birmingham, Mayor Richard Arrington, disputed the claim. The only evidence to support this argument came in the form of opinion that was not shown to be based upon sufficient experience or factual background. The best that can be said for this claim is that any election having no candidates for public office is likely to produce a lower voter turnout than will an election at which candidates for public office are running. There is no evidence to suggest that any particular racial group will be impacted to a greater or lesser degree than will another racial group.

Second, the plaintiffs claim that the close proximity of the dog racing referendum to the opening of the public schools will discourage blacks from voting. The only evidence presented in support of this argument came from the plaintiff, Cynthia Harris. She testified that on August 27 she would be engaged in enrolling two children in school. She conceded on cross-examination that she did not work and could vote after enrolling her children in school except that she had "other things scheduled." Clearly, these "other things" were personal to her and had nothing whatsoever to do with the Dog Racing Act. The court notes that schools will be opening for whites, blacks and all other racial groups at the same time. There is no evidence that the opening of schools will impact blacks to

a greater or lesser degree than whites.

On this point, it should be noted that Mayor Arrington recommended the date for the referendum and the date was selected by resolution of the Birmingham City Council which has a six to three black majority.

Finally, the plaintiffs claim that the lack of a question on the dog racing ballot concerning the establishment of a racing commission represents a change subject to preclearance. They have not presented any evidence from which the court could conclude that this change has any potential for discrimination on the basis or race or color.

IV. CONCLUSION

The court will enter final judgment dismissing the Voting Rights Act claims of all the Greene County plaintiffs for want of standing and dismissing the claim of plaintiff Cynthia Harris on the merits.

Done, this 26th of August, 1991.

/s/ Edwin L. Nelson

Edwin L. Nelson
United States District Judge

ORDER, SEPT. 19, 1991

United States District Court
Northern District of Alabama
Southern Division

The Greene County Racing Commission *et al.*,	]	
Plaintiffs,	]	
vs.	]	CV-91-N-1930-S
The City of Birmingham, *et al.*,	]	
Defendants.	]	

BEFORE DUBINA, Circuit Judge and PROPST and NELSON, District Judges.

NELSON, District Judge:

This matter comes before the court on the plaintiffs' motion for reconsideration of the opinion and order entered in this action on August 26, 1991. Plaintiffs assert that the court misconstrued the threshold burden properly allocated to the plaintiffs by requiring them to adduce evidence sufficient to demonstrate that changes in qualifications or prerequisites to voting in the Dog Racing Election of August 27, 1991, created a "potential for discrimination" with respect to the rights of persons to vote

on account of race or color. The court will give further consideration to the claim of the plaintiff, Cynthia Harris. It should be noted, however, that the *real* parties with interests in this action, the Greene County plaintiffs, clearly have no standing to raise claims under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

The thrust of plaintiffs' motion is that this court erred, first, in requiring them to meet an initial burden of showing a "potential for discrimination" and, second, in concluding that they failed to produce credible evidence from which the court could have concluded that there was such a *potential* for discrimination in the election on the Dog Racing Act. In reaching its decision, this court relied upon the opinions of Judge Vance in two previous opinions of this court, *Turner v. Webster*, 637 F. Supp. 1089 (N.D. Ala 1986) (three-judge court) (Vance, J.), *Hardy v. Wallace,* 603 F. Supp. 174 (N.D. Ala. 1985) (three-judge court) (Vance, J.), and controlling decisional law from the Supreme Court.

The Supreme Court has, on more than one occasion, referred to the duty of the courts to determine whether there existed a "potential for discrimination." *See NAACP v. Hampton County Election Comm'n,* 470 U.S. 166, 181, 105 S.Ct. 1128, 1137, 84 L. Ed. 2d 124, 138 (1985); *Dougherty County Board of Educ. v. White,* 439 U.S. 32, 42, 99 S. Ct. 368, 374, 58 L. Ed. 2d 269, 280 (1978). In *Perkins v. Matthews,* 400 U.S. 379, 91 S. Ct. 431, 27 L. Ed. 2d (1971), relied upon by plaintiffs, the Supreme Court cited *Allen v. State Board of Elections,* 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1 (1969), for the proposition that "we do not consider whether this change has a discriminatory purpose or effect." *Perkins,* 400 U.S. at 385 (quoting *Allen*

393 U.S. at 570). The Court then stated:

> This is not to say that district court limited to deciding a "coverage" question should close its eyes to the congressional purpose in enacting § 5 - to prevent the institution of changes which might have the purpose or effect of denying or abridging the right to vote on account of race or color, for Congress meant to reach "the subtle, as well as the obvious, state regulations. . ." which may have the effect. *Allen,* 393 U.S., at 565. "What is foreclosed to such district court is what Congress expressly reserved for consideration by the District Court For the District of Columbia or the Attorney General - the determination whether a covered change does or does not have the purpose or effect "of denying or abridging the right to vote on account of race or color."

Perkins v. Matthews, 400 U.S. at 385. The Court in *Perkins,* when referring to the "potential" for discrimination, stated, "§ 5 was designed to cover changes having a potential for racial discrimination in voting . . . ." *Id.* at 389. In *NAACP v. Hampton County Election Comm'n*, Justice White, writing for the court, stated, "our inquiry is limited to whether the challenged alteration has the potential for discrimination." *NAACP v. Hampton County*, 470 U.S. at 181 (emphasis in original). Similarly, in *Dougherty County Board of Ed. v. White*, Justice Marshall wrote, "Thus in determining if an enactment triggers § 5 scrutiny, the question is not whether the provision is in fact innocuous

and likely to be approved, but whether it has the potential for discrimination." *Dougherty,* 439 U.S. at 42 (emphasis in original).

Logic and common sense dictate that any plaintiff who brings a challenge under § 5 of the Voting Rights Act must first meet some minimal threshold to qualify for relief. If the calling of any election, without regard to any "potential for discrimination," was subject to § 5 preclearance, there could never be any place for a three-judge court to exercise any judgment. The question for the court would always be only, "Is there an election and is there any change, no matter how insubstantial such change might be, from previous similar elections?" The burden imposed upon the plaintiff is a minimal one, but it "cannot be treated as so minimal as to write this requirement completely out of existence." *Hawthorne v. Hurley*, 756 F. Supp 527, 531 (M.D. Ala. 1990) (three-judge court) (Thompson, J.), vacated, 111 S. Ct. 1408, 113 L. Ed. 2d 440 (1991).[1]

In the motion for reconsideration, the plaintiffs continue to conjecture that various aspects of the Dog Racing election *may* impinge on the right to vote on account of race or color. If the plaintiffs, however, are required to show a "potential for discrimination," as the court has decided they are required to do, it seems obvious that there must be some credible evidence of such potential, as opposed to mere speculation or unsupported

---

[1] After the parties in *Hawthorne v. Hurley* reached an accord, the Supreme Court vacated the judgment and remanded with instructions to dismiss the case. The court cites the case primarily to illustrate the manner in which similar claims have been treated.

suspicion. As the court noted in its original opinion, the plaintiffs failed to offer any credible evidence that any one of the challenged practices, qualifications, or prerequisites to voting has any potential for discrimination on the basis of race or color. They still have not produced any credible evidence that would support a finding of potential discrimination.

Accordingly, for the foregoing reasons, it is the order, judgment and decree of the court that the plaintiffs' motion for reconsideration be and the same hereby is DENIED.

Done, this 19th of September, 1991.

/s/ Edwin L. Nelson

Edwin L. Nelson
United States District Judge

STATUTORY PROVISIONS INVOLVED

SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, 42 U.S.C. § 1973c (1988):

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the

right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided,* That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made. Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 and any appeal shall lie to the Supreme Court.

CODE OF ALA. § 11-65-1(14) (MICHIE 1991 SUPP.):

It is further necessary and desirable (i) to permit the qualified voters of the host county of any Class 1 municipality and the qualified voters of such municipality who reside in the host county to determine by an election whether a commission shall be incorporated for such municipality and whether pari-mutuel wagering on horse racing or greyhound racing or both shall be authorized in such municipality, and (ii) in the case of any Class 1 municipality for which the incorporation of a commission and pari-mutuel wagering on either horse racing or greyhound racing, but not both, has been previously approved by an election of the qualified voters of such municipality and the host county, to permit such voters to determine whether the additional activity of pari-mutuel wagering on horse racing or greyhound racing, as the case may be, shall be authorized in that part of such municipality located in the host county.

CODE OF ALA. § 11-65-2(a)(18) (MICHIE 1991 SUPP.):

HOST COUNTY. Any county in which a sponsoring municipality is located. With respect to a sponsoring municipality located in more than one county, this term means the county in which a majority of the residents of the sponsoring municipality reside, as determined by the most recent federal decennial census.

CODE OF ALA. § 11-65-4(b), (c), and (d) (MICHIE 1991 SUPP.):

(b) In any case where an election has been previously held for a sponsoring municipality and the host county thereof in accordance with the then effective provisions of this chapter that authorized either horse racing and pari-mutuel wagering thereon or greyhound racing and pari-mutuel wagering thereon, but not both such racing activities, and a commission has been incorporated for such municipality and is in operation, the racing and wagering activity not authorized by such previous election shall not be permitted in such municipality pursuant to this chapter unless the same shall have been authorized by another election held in the host county in which such activity shall have been approved by both (i) a majority of the votes cast in such election by voters who reside in the host county (including those voters who reside in the sponsoring municipality) and (ii) a majority of the votes cast in such election by voters who reside in the commission municipal jurisdiction. In order to authorize the holding of the required election in the host county, the governing body of the sponsoring municipality may adopt an ordinance or resolution requesting the county commission of the host county to call an election to be held on the question of authorizing any racing and wagering activity covered by this chapter that has not theretofore been authorized by an election, and in such ordinance or resolution the governing body of the sponsoring municipality shall determine the date of such election, which shall not be less than 45 days nor more than 90 days after the date of the adoption of such ordinance or resolution, and shall further specify the racing

and wagering activity, whether horse racing and pari-mutuel wagering thereon or greyhound racing and pari-mutuel wagering thereon, that is to be authorized by such election; provided, however, that, anything contained in this chapter to the contrary notwithstanding, in the case of any Class 1 municipality for which horse racing and pari-mutuel wagering thereon has been authorized by an election held prior to April 16, 1991, the governing body of such municipality is hereby mandated to request the county commission of the host county call an election before January 1, 1992, in accordance with the provisions of this section 11-65-4 for purpose of determining whether greyhound racing and pari-mutuel wagering thereon shall be permitted in the commission municipal jurisdiction. Depending on which racing and wagering activity is to be authorized by the election, the question to be voted on shall be stated on the ballots or voting machine tags substantially as follows:

> "Do you favor the authorization of [insert here one of the following alternatives specified by the governing body of the sponsoring municipality in the ordinance or resolution calling the election]
>
> "horse racing and pari-mutuel wagering thereon"
>
> or
>
> "greyhound racing and pari-mutuel wagering thereon"
>
> in that part of the City of _____ [insert the name of the sponsoring municipality] located in _____ [insert the name of

the host county], as provided in Chapter 65, Title 11?"

Yes _____

No _____

The sponsoring municipality shall promptly furnish a certified copy of the ordinance or resolution calling such election to the county commission of the host county, whereupon such county commission shall be required to call an election in the host county to be held on the question and on the date specified in such ordinance or resolution. The election so called shall be held only among the qualified voters of the host county, and no voters of the sponsoring municipality who reside in counties other than the host county shall be permitted to vote in such election. If the majority of the votes cast in such election are "Yes", and if the majority of the votes cast in such election by voters who are residents of the commission municipal jurisdiction are "Yes", then the racing and wagering activity authorized by such election, in addition to the racing and wagering activity previously authorized to be conducted in the commission municipal jurisdiction, shall be legal in such jurisdiction, as and to the extent conducted in accordance with the provisions of this chapter, but such activity shall continue to be illegal in those parts of the sponsoring municipality outside such jurisdiction. If the majority of the votes cast in such election are "No," or if the majority of the votes cast in such election by voters who are residents of the commission municipal jurisdiction are "No", then the racing and wagering activity that was the subject of such election shall not be legal in the commission municipal jurisdiction,

unless the governing body of the sponsoring municipality should later call another election subject to the provisions of subsection (d); provided, however, that the disapproval by the voters in any election of any additional racing and wagering activity to be conducted in the commission municipal jurisdiction shall not revoke or impair any previous authorization for other racing and wagering activity, which authorization shall continue in full force and effect.

(c) The appropriate election officials of the sponsoring municipality and the host county are hereby directed to cooperate in calling and conducting any election held pursuant to the provisions of subsection (a) or (b) and in canvassing and declaring the results of such election. Any election called by the sponsoring municipality shall not be held on the date the sponsoring municipality holds an election for its mayor or for two or more members of its governing body. Any such election shall be called, advertised, conducted and the results thereof canvassed and declared in the manner provided by law for calling, advertising, conducting and canvassing other county elections on propositions submitted to the voters of the host county and as the governing body of the host county shall provide in the resolution calling such election; provided, however, that, notwithstanding any statute which requires, or might be interpreted to require, notice of such election in the sponsoring municipality to be published more than 30 days before such election, it is hereby expressly provided that the publication of notice of an election at least 30 days prior thereto prescribed by section 17-7-5 for county elections shall also apply to the publication of notice of such election in the sponsoring municipality. The election officials of the sponsoring

municipality and the host county are hereby directed to cooperate in preparing voter lists and establishing polling places that will enable the results of such election in the commission municipal jurisdiction to be separately determined from the results of such election in the host county as a whole. The costs of conducting any election pursuant to the provisions of subsection (a) or (b) shall be equitably apportioned between the sponsoring municipality and the host county according to agreement among the respective election officials of each such political subdivision or according to such other statutes as may at the time be applicable to the division of such election costs between the sponsoring municipality and the host county. In the event that the election officials of the sponsoring municipality and the host county cannot agree on a division of election costs and no other statute governs the division of such costs, such costs shall be divided equally among the sponsoring municipality and the host county. The results of any election conducted pursuant to this chapter shall be certified to the secretary of state, within 30 days after the election returns are canvassed, by the officer then authorized by law to certify proceedings taken by the election commission, board of canvassers or other body then required by law to canvass and declare the results of elections held in the host county.

(d) One or more subsequent elections may be requested by the governing body of a Class 1 municipality to be called by the county commission of the host county if the question submitted at the preceding election called pursuant to subsection (a) or (b) does not receive the required majority of the votes cast by voters of both the host county and the commission municipal jurisdiction; provided, however, that not more than one election in

each calendar year may be requested to be called pursuant to said subsection (a) or (b) by the governing body of any Class 1 municipality. Any such subsequent election shall be called, advertised, conducted and the results thereof canvassed and declared in the same manner and subject to the same conditions as the preceding election called pursuant to said subsection (a) or (b), as the case may be.

BIRMINGHAM CITY COUNCIL RESOLUTION 1257-1

BE IT RESOLVED by the Council (herein called the "Council") of the **CITY OF BIRMINGHAM, ALABAMA** (herein called the "City"), as follows:

Section 1. The Council has ascertained and does hereby declare as follows:

(a) Since the population of the City as certified by the 1970 federal decennial census was more than 300,000 inhabitants, the City is a Class 1 municipality under the provisions of § 11-40-12 of the Code of Alabama 1975.

(b) Act No. 84-131 of the 1984 Regular Session of the Legislature of Alabama (herein called the "Horse Racing Act") provided for the conduct of horse racing and pari-mutuel wagering thereon within any Class 1 municipality and for the creation within any such municipality of a racing commission to license, regulate and supervise such horse racing and pari-mutuel wagering.

(c) In a special election held throughout Jefferson County, Alabama (herein called the "County) on

June 12, 1984, both a majority of the voters residing within the City who participated in such election and a majority of the voters residing within the County who participated in such election voted in favor of the authorization of horse racing and pari-mutuel wagering thereon in the City and the creation of a racing commission for the City to license, regulate and supervise such horse racing and pari-mutuel wagering.

(d) As a consequence of the outcome of the aforesaid election held on June 12, 1984, The Birmingham Racing Commission (herein called the "Racing Commission") was incorporated to license, regulate and supervise horse racing and pari-mutuel wagering thereon within the City.

(e) Act No. 91-187 of the 1991 Regular Session of the Legislature of Alabama (herein called the "greyhound Racing Act") amended the Horse Racing Act in a number of respects for the purpose of providing for the conduct of greyhound racing and pari-mutuel wagering thereon within any Class I municipality.

(f) Certain provisions of the Greyhound Racing Act have the effect of limiting the geographic jurisdiction of the Racing Commission to the territory of the City that is located within the County (such territory being herein called the "Commission Municipal Jurisdiction") with the result that any racing or wagering activities authorized by said act must be conducted within such portion of the City.

(g) Under the Greyhound Racing Act, a condition precedent to the conduct of greyhound racing and pari-mutuel wagering thereon within the Commission

Municipal Jurisdiction is the approval of such racing and wagering in an election held throughout the County by both (i) a majority of the votes cast in such election by voters who reside in the County (including those voters who reside in the City) and (ii) a majority of voters cast in such election by voters who reside within the Commission Municipal Jurisdiction.

(h) Under the Greyhound Racing Act, the costs of conducting any special election to determine whether or not greyhound racing and pari-mutuel wagering thereon are to be authorized in the Commission Municipal Jurisdiction are to be equitably apportioned between the City and the County according to agreement among the respective election officials of the City and the County or according to such statutes as may at the time be applicable to the division of such election costs between the City and the County.

(i) It is appropriate and desirable for the Council to request the governing body of the County to call an election to be held throughout the County on the question of authorizing greyhound racing and pari-mutuel wagering thereon within the Commission Municipal Jurisdiction.

Section 2. The Council hereby requests the Jefferson County Commission to call an election to be held throughout the County on August 27, 1991, for the purpose of determining whether or not greyhound racing and pari-mutuel wagering thereon shall be permitted in the part of the City located within the County. The Council hereby requests that such election be held and conducted pursuant to, and in accordance with the provisions of the

Greyhound Racing Act. Without limiting the generality of the foregoing, the Council hereby requests that the Jefferson County Commission cause such election to be conducted in such a manner as will facilitate the separate canvassing of (i) the votes cast in such election by voters who reside in the County (including those voters who reside in the City) and (ii) the votes cast in such election by voters who reside in the Commission Municipal Jurisdiction.

Section 3. The various election officials of the City are hereby authorized and directed to cooperate with the election officials of the County in preparing for, conducting and canvassing the results of the special election requested in Section 2 hereof.

Section 4. The City Clerk is hereby directed to cause a certified copy of this resolution to be delivered as soon as practicable to the President of the Jefferson County Commission.

NOTICE OF APPEAL, OCT. 17, 1991

Notice of Appeal to the Supreme Court of the United States of America from the Judgment of a Three Judge Court

United States District Court for
the Northern District of Alabama

File Number CV 91-N-1930-S

THE GREENE COUNTY RACING COMMISSION, THE GREENE COUNTY BOARD OF EDUCATION, RANDY GANN, THE GREENE COUNTY COMMISSION, [Filed Oct. 17, 1991]

vs. Notice of Appeal

THE CITY OF BIRMINGHAM, THE JEFFERSON COUNTY COMMISSION, THE BIRMINGHAM RACING COMMISSION, BIRMINGHAM SPORTS MANAGEMENT, MILTON MCGREGOR,

Defendants.

NOTICE is hereby given that Cynthia Harris, a plaintiff in this cause, appeals to the Supreme Court of The United States of America from a final order entered in this action on the 19th of September, 1991, finding that

Plaintiff had failed to provide credible evidence that the challenged "alteration" had the potential to discriminate, and therefore, there had been no violation of Section 5 of the Voting Rights Act of 1965, Sections 42 U.S.C. and 1973 C.

Submitted by,

CHESTNUT, SANDERS, SANDERS, WILLIAMS & PETTWAY, P.C.

By /s/ J.L. Chestnut, Jr.

Attorney for Plaintiff
Cynthia Harris
P.O. Box 1305
Selma, Alabama 36702-1305
(205) 875-9264

FILED
JAN 16 1992
OFFICE OF THE CLERK

(2)

No. 91-962

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

MOTION OF APPELLEE CITY OF BIRMINGHAM TO AFFIRM OR DISMISS

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabma 35203
(205) 251-1000

QUESTION PRESENTED

The question presented by this motion to affirm the judgment below or to dismiss the appeal is whether this Court should allow the parties-plaintiff/appellant to so pervert the provisions of § 5 of the Voting Rights Act as to subvert the remedial purposes of the Act, where:

a. The interests sought to be protected in the lawsuit were clearly not those of the nominally named individual plaintiff (and Nominal Appellant herein), but were rather the economic interests of the named official bodies of Greene County, Alabama, which entities operate and/or are monetary beneficiaries of an ongoing pari-mutuel dog racing track in that County, the plaintiffs below being convinced that the institution of a competing dog racing track in the City of Birmingham, located in Jefferson County, Alabama, would spell financial disaster for the Greene County track;

b. The record below is barren, both directly and inferentially, of any fact, suggestion, or glimmer of evidence that the election provisions governing the institution of dog racing in the City of Birmingham are, would or could conceivably be racially discriminatory or have the potential for such; and

c. In any event, the case has been rendered moot in that the interests for whom the Nominal Appellant is fronting sought below to enjoin an August 27, 1991, referendum election on whether pari-mutuel dog racing could be conducted in Birmingham; that election was held on that date and the majority of those voting voted "no."

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
INTRODUCTION	1
BACKGROUND FACTS	1
ARGUMENT	2
CONCLUSION	10

TABLE OF AUTHORITIES

Cases *Page*

Allen v. State Board of Elections, 393 U.S. 544 (1969) 2

Chisom v. Roemer, ___ U.S. ___, 111 S.Ct. 2354 (1991) 3

Dougherty Cty, Ga. Bd. of Ed. v. White, 439 U.S. 32 (1978) 6

Georgia v. U.S., 411 U.S. 526 (1973) 6

NAACP v. Hampton Co. Election Com'n, 470 U.S. 166 (1985) 6

Perkins v. Matthews, 400 U.S. 379 (1971) 6

Statutes

Voting Rights Act of 1965, § 5, 42 U.S.C. §1973c ..... *passim*

Act No. 91-187, amending Code of Alabama 11-65-1 *et seq.* 1, 9

1984 Ala. Act No. 84-131 1

Other

U.S. Const., Amdt. 15, § 1 3

INTRODUCTION

This case is no more and no less than the cynical exploitation of the Voting Rights Act in furtherance of the purely economic goals of the true parties in interest. From the parties-plaintiff, to the objections raised, to the contrast between the object of the litigation and the known preferences of a majority of black voters, to the testimony of Cynthia Harris (sometimes referred to as the "Nominal Appellant"), the record in this case reflects only unabashed abuse of the Voting Rights Act. For that reason, it is manifest that the issues raised by the Nominal Appellant are so insubstantial as not to warrant further argument, and the decision below is due to be affirmed summarily.

BACKGROUND FACTS

By statutory enactments of some years ago, the Alabama legislature authorized the institution of dog racing and pari-mutuel wagering thereon in three Alabama counties: Greene (J. S. App. A-6), Mobile and Macon. Greene County is geographically closer to the City of Birmingham than is Mobile County or Macon County.

In 1984, the Alabama legislature enacted Act No. 84-131 (Code of Ala. §11-65-1 *et seq.*), authorizing pari-mutuel wagering on horse racing in Birmingham if approved by a majority of the voters in Birmingham, and by a majority of the voters of the counties in which Birmingham lay; at that time, only Jefferson County. The proposition won voter approval, and a horse racing track was thereafter built and operated. The horse track operation was a financial disaster.

Effective July 18, 1991, the Alabama legislature amended the horse racing act of 1984 with Act 91-187 so as to permit, on voter approval in the City of Birmingham and Jefferson County, pari-mutuel wagering on dog racing in Birmingham. At the time Act 91-187 was passed, a small portion of Shelby County — encompassing less than 100 registered voters —

had been annexed by the City of Birmingham. Act 91-187 did not require a vote of any citizen of Shelby County.

Section 5 preclearance of the dog racing act amendment to the horse racing act was not sought. (Nor had preclearance been sought for the 1984 horse racing act. No lawsuit resulted from that failure. Apparently the Greene County interests did not view horse racing as a threat to the profits of the dog track in Greene County.)

Plaintiffs[1] commenced this action on August 15, 1991, seeking to enjoin the August 27, 1991, referendum election among voters of Jefferson County to decide, as authorized by Alabama Act 91-187, whether dog racing and wagering thereon was to be had in Jefferson County, City of Birmingham. The alleged grounds of the action included the failure of the State of Alabama or concerned local governments to seek preclearance of Act 91-187 under Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

ARGUMENT

The Voting Rights Act of 1965, as amended, was enacted by the Congress as a sorely needed remedial measure to ensure that black citizens could enjoy fully the freedom to vote and the rights and benefits attending that freedom in states and localities, largely in the United States South, where, historically and traditionally, those freedoms and rights were denied to blacks or otherwise abridged (J. S. App. A-3, n. 1, 2). "The Voting Rights Act was aimed at ... state regulations which have the effect of denying citizens their right to vote because of their race." *Allen v. State Board of Elections,* 393 U.S. 544, 565 (1969).[2] As detailed more fully below, this case does not implicate *any* of the concerns animating the Voting Rights Act.

---

[1] As explained below, the Nominal Appellant was not one of the original plaintiffs in this action.

[2] The preamble to the Voting Rights Act of 1965 establishes that the central purpose of the Act is '[t]o enforce the fifteenth amendment to the

The original parties to this litigation were the Greene County Racing Commission, the Greene County Board of Education (a beneficiary of a portion of the proceeds from the Greene County Dog Racing Track), the Greene County Commission (the county governing body) (collectively, the "Greene County Interests"), and one Randy Gann, allegedly a registered voter of that minute portion of Birmingham lying in Shelby County, Alabama. As later events were to demonstrate, Gann was a hastily drafted and poorly selected pawn; the Greene County Interests were the true parties in interest.

The circumstances of original nominal plaintiff Randy Gann — the only plaintiff with any arguable standing to raise Voting Rights Acts claims — dictated the issues originally identified by counsel for the Greene County Interests. Pursuant to an Order of the trial court, the plaintiffs identified prior to the hearing the claims they intended to present to the Court. Those claims were: (1) by limiting voting to Birmingham residents who live in the Jefferson County portion of the City, Birmingham residents of the Shelby County portion of the City had been "deannexed"; (2) the holding of an election to consider dog racing and pari-mutuel betting was itself a change from practices and procedures as they existed on November 1, 1984; and (3) the scheduling of a special election was a change requiring preclearance.[3] (J. S. App. A-15).

Then, within 24 hours of the hearing, Randy Gann withdrew as a party plaintiff without explanation,[4] and an eleventh hour

---

Constitution of the United States.' The Fifteenth Amendment provides: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.' U.S. Const., Amdt. 15, § 1." *Chisom v. Roemer*, ___ U.S. ___, 111 S.Ct. 2354, 2357 (1991).

[3] The Nominal Appellant suggests in the Jurisdictional Statement, p. 6, that all issues ultimately raised were originally raised. That is not so.

[4] The evident explanation is provided by the absence of his name from the voting rolls of Shelby County. J. S. App. A-19, n. 12.

recruit, Nominal Appellant Cynthia Harris, emerged.[5] Unlike Gann, Harris was black and from Jefferson County, and the issues pressed by the Greene County Interests shifted as rapidly as had their nominal plaintiffs. The newly anointed nominal plaintiff brought to the hearing new, previously unannounced arguments concerning the timing of the election, in addition to firing a blunderbuss of other challenges to the referendum.

Nominal Appellant Cynthia Harris voiced two specific complaints from the witness stand: (1) the date on which the referendum was scheduled was inconvenient for her, Appellee App. A-3; and (2) she did not feel that she had been provided sufficient information upon which to make a decision, Appellee App. A-4. The Nominal Appellant also identified the relief she sought. She wanted the court to change the substance of the dog racing act to require that the government receive a greater portion of the proceeds, Appellee App. A-11, and she thought the track "should be for the people" rather than the designated licensee. Appellee App. A-12. Finally, the Nominal Appellant wanted "enough time to find out what's really going on as far as this dog track is concerned." Appellee App. A-13. Only her complaint as to the timing of the election arguably falls within the zone protected by the Voting Rights Act, and that grievance is undeniably illusory.[6]

The Nominal Appellant's sole pertinent objection to the setting of the referendum was that the referendum was on the same day that she was required to enroll two of her children in school. Because she had to enroll her two children in school,

---

[5] Cynthia Harris clearly was a party in name only — she was no more than a front for the Greene County Interests. The direct examination of Harris by "her" attorney was designed to elicit only facts sufficient to satisfy the standing requirements. Appellee App. A-2.

[6] Ms. Harris made no claim that blacks were disapportionately denied information. Indeed, she made no claim that *she* had been denied information. Her testimony revealed that she had ignored widespread press accounts and that she was a victim only of her own apathy. Appellee App. A-5-7.

said the Nominal Appellant, she would be unable to vote in the election. Necessary to that argument is the implicit assertion that the Voting Rights Act was somehow implicated by her "inability" to vote.

The Nominal Appellant's own testimony, however, revealed that her personal difficulty, if any, was largely imagined and in any event, not demonstrated to have any effect on the ability of blacks to vote or the likelihood that blacks would vote. The polls were to be open between 7:00 a.m. and 7:00 p.m. The only identified obligation Ms. Harris had that day was to enroll two children in school between 7:30 and 8:00 a.m. Appellee App. A-8. For the remainder of the voting day, Ms. Harris, though *unemployed,* had an unspecified full calendar that would preclude her from voting. Appellee App. A-8. However, her full calendar has no bearing on the ability and opportunity of blacks generally to vote, either absolutely or vis-a-vis whites.

Equally irrelevant to the Act is the coincidence that the referendum fell on the date that Ms. Harris was to enroll two of her children in school. Ms. Harris was to enroll two children in Holy Family, a school — presumably a private school — in Birmingham. The record is wholly silent as to the racial composition of Holy Family or of the number or racial composition of other schools, if any, with registration that day. In short, there was and is *no* evidence — not even a scintilla — for a conclusion that the "plight" of the Nominal Appellant, if indeed one existed, was applicable to any other potential black voters. The absence of such evidence comes as no surprise, given that the interests sought to be advanced by this litigation are those of the various Greene County entities, not those of black voters.

What is ultimately most absurd, amidst a potpourri of absurdities, is that plaintiffs purported to represented the interest of black voters; after all, the Voting Rights Act is designed to prevent the dilution of black voting strength, not to serve as a tool to further business interests unrelated to the remedial purposes of that act. However, the only goal of the Greene

County Interests was to see dog racing in Jefferson County defeated through the injunction of the referendum. In marked contrast, the great majority of the black community *supported* dog racing in Birmingham. In those voting precincts in which a majority of the registered voters are black, a clear majority of voters were in favor of authorizing dog racing. Aff. of Nell Hunter.[7] In fact, the 41 precincts where 90% or more of the registered voters are black voted for dog racing at percentages ranging from 78.8% to 94.4%. Aff. of Nell Hunter.

Examination of the decisional law applicable to those claims of the Nominal Appellant arguably bearing on the Voting Rights Act clearly establishes that the disposition of the court below was correct. The three judge panel did not attempt to discern or evaluate the actual purpose or effect of the alleged changes in voting procedure. Rather, the court directed its attention to the *potential*, if any, for discrimination under the Alabama dog racing statute, as prescribed by the decisions of this Court. *Dougherty Cty, Ga. Bd. of Ed. v. White*, 439 U.S. 32, 42 (1978) (per Marshall) ("Thus, in determining if an enactment triggers § 5 scrutiny, the question is not whether the provision is in fact innocuous and likely to be approved, but whether it has a *potential* for discrimination") (emphasis in original); *NAACP v. Hampton Co. Election Com'n*, 470 U.S. 166, 181 (1985) ("Our inquiry is limited to whether the challenged alteration has the *potential* for discrimination") (emphasis in original); *Georgia v. U.S.*, 411 U.S. 526, 534 (1973) ("The question, rather, is whether such changes have the potential for diluting the value of the Negro vote and are within the definitional terms of § 5"); *Perkins v. Matthews*, 400 U.S. 379, 388-389

---

[7] The hearing in the court below was held prior to the election. This Appellee has been informed by the chief deputy clerk of this Court that Appellee appropriately may include the election results in an Appendix to this Motion. The official election results are an attachment to the Affidavit of Nell Hunter. The affidavit and its attachment collectively appear at pp. A-14-A-63 to the Appendix filed herewith.

(1971) ("Moreover, § 5 was designed to cover changes having a potential for racial discrimination in voting").

The three judge panel's dismissal of the voting rights claims was amply supported by the undisputed evidence of record:

1. *The exclusion of Shelby County voters.*[8] The hasty withdrawal of Randy Gann as a plaintiff purportedly representing voters of Shelby County notwithstanding, the Nominal Appellant persists in asserting that the statute worked a Voting Rights violation in that only voters residing in Jefferson County (the county in which dog racing would be had) were to vote in the referendum. Putting aside the obvious reasonableness of this provision, it is impossible to conclude that the exclusion of Shelby County voters, 92.4% of whom are white, bears on any interest protected by the Voting Rights Act. More strange is the asserted interest in the claimed voting rights of the voters in that small part of Shelby County annexed to Birmingham, where 98.78% (81 out of 82) registered voters are white (J. S. App. A-19). On these facts, the three judge panel reached the only plausible conclusion: exclusion of the overwhelmingly white Shelby County voters posed no conceivable potential for minority voter discrimination. To the contrary, inclusion of a group of voters, over 90% of whom are white, would have the effect of diluting the votes of blacks in Jefferson County and Birmingham, both of which have substantially larger proportions of black voters.

---

[8] Though the record is not fully developed on the issue, the exclusion of Shelby County voters does not constitute a change in voting procedures. As the court below recognized, *inclusion* of Shelby County voters would itself have been a change requiring preclearance. Historically, and quite logically, the franchise in referenda has been limited to registered voters residing within the affected jurisdiction — here, Jefferson County. For example, every referendum on dog racing has been limited to the county in which dog racing was to occur. Plaintiffs below certainly cited no pre-1964 voting procedures that differed from that followed in this case to limit the vote to the affected county.

2. *The setting of the election date.* The dog racing act required the Birmingham City Council to set the date of the referendum election on dog racing. That act proscribed holding the election at the time of a mayoral election or in an election in which two or more seats on the Council were to be filled. The record is barren of any evidence or inference that this provision would in any manner adversely impact black voters. The Mayor of Birmingham, a black whose political savvy is evidenced by his lengthy tenure in office, testified that it would not. Like the black community at large, the Mayor supported dog racing and passage of the referendum. Because the black community heavily favored dog racing, a large black turnout was in the Mayor's interest. Yet the Mayor supported the proscriptions challenged by the Nominal Appellant. Moreover, the date set for the referendum was set by the Birmingham City Council — comprised of six black members and three white members (J. S. App. A-22, 23) — upon the recommendation of the Mayor.[9] The Mayor testified that he would have set the referendum on the date it was set (a date for which county-wide elections were already scheduled) even had the date of the Mayoral election not been proscribed. (J. S. App. A-22, 23).

In sum, the voting rights allegations in this case are a farce, a hastily constructed facade poorly concealing the purely economic interests motivating this lawsuit. Nonetheless, the three judge panel accorded plaintiffs a full hearing and a thoughtful memorandum of opinion rejecting their claims. The City of Birmingham submits that this Court cannot and should not be so generous with its limited and valuable time. The Court should summarily affirm the unanimous judgment of the three judge panel below.

---

[9] In dog racing referenda held in other counties, the date uniformly was set by the County Commission. Here, the predominately black City Council, rather than the predominately white County Commission, was designated by the Legislature as responsible for setting the date.

In any event, the controversy under the Voting Rights Act, if ever extant, is now moot. For the economic reasons above stated, the Greene County official bodies sought in their complaint to enjoin the holding of the August 27, 1991 election. Following upon the court below's dismissal of all Voting Rights claims, the election was held and the predominately white opponents of dog racing in Birmingham prevailed, the "yes" votes of the overwhelming number of voting blacks notwithstanding. Aff. of Nell Hunter. Under the terms of Act 91-187 if, as happened here, the dog racing proposition was defeated by the voters, the City of Birmingham may call another election. Such subsequent election may be held 45-90 days following the date of the City Council action calling the election. Not more than one such election may be held in any one calendar year (Code of Ala. 11-64-4(b) and (d) as set forth at J. S. App. A-32, 36-7).

Appellant, if and in the event another dog racing election is called by the City Council of Birmingham, is free to seek to enjoin any such election or, if held, to seek a declaration voiding or nullifying the election results. In brief, the instant case has been mooted by events. The opportunity for this appellant or others to assert the invalidity of any election called in the future is clearly not foreclosed.

CONCLUSION

For the within stated reasons, the Court should dismiss this appeal or, alternatively, summarily affirm the judgment of the three judge court.

Respectfully submitted,

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

Supreme Court, U.S.
FILED
JAN 16 1992
OFFICE OF THE CLERK

(3)

No. 91-962

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

APPENDIX TO MOTION OF APPELLEE CITY OF BIRMINGHAM TO AFFIRM OR DISMISS

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabma 35203
(205) 251-1000

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

GREENE COUNTY RACING COMMISSION, ET AL.	)	CASE NO. 91-CV-1930
VS.	)	BIRMINGHAM ALABAMA
CITY OF BIRMINGHAM, ET AL. DEFENDANT	)	AUGUST 22, 1991 9:00 A.M.

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE A THREE-JUDGE PANEL:
THE HONORABLE JOEL F. DUBINA
11TH CIRCUIT COURT OF APPEALS
THE HONORABLE ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE
THE HONORABLE EDWIN L. NELSON
UNITED STATES DISTRICT JUDGE

* * *

The Clerk: Would you state your name, please?
The Witness: Cynthia Harris.
The Clerk: Would you spell your last name, please?
The Witness: H-A-R-R-I-S.
The Clerk: And in what city and state do you reside?
The Witness: Birmingham, Alabama.
The Clerk: Thank you.

DIRECT EXAMINATION

By Ms. Sanders:

Q Good afternoon, Ms. Harris. Let the record show that Ms. Harris is an African-American, is that correct?

A That's correct.

Q Or Black, whatever your choice. And I think you testified that you do live in Birmingham?

A Yes.

Q How long have you lived here?

A All my life.

Q Are you a registered voter?

A Yes, I am.

Ms. Sanders: That's all, your honor.

Judge Dubina: Cross examination.

CROSS EXAMINATION

By Mr. Gray:

Q Ms. Harris, my name is Fred Gray. How did you become involved in this lawsuit?

Ms. Sanders: Your honor, we object, that is totally irrelevant.

Mr. Gray: Your honor, this is —

Judge Dubina: Well, it might be. I'll let her answer that. Overruled.

The Witness: I was talking to a girlfriend of mine and we got to discussing about the dog racing bill, and she just — she was telling me she had started —

Ms. Sanders: We object, your honor, to what somebody said to her.

Judge Dubina: I sustain that. Don't tell us what somebody told you.

The Witness: Okay.

By Mr. Gray:

Q When did this conversation take place?

A About a couple of days ago.

Q Where did it occur?

A In my residence.

Q And where do you live?
A 100 Pratt Highway. 100 Pratt Highway.
Q 100 Pratt Highway?
A Uh-huh, apartment 1402.
Q And what's your employment?
A I'm unemployed right now.
Q When did you become a registered voter?
A At age eighteen.

Judge Dubina: I'm sorry, I couldn't hear that. What did you say?

The Witness: At age eighteen.

Judge Dubina: Age eighteen?

The Witness: Uh-huh.

Judge Dubina: Thank you.

By Mr. Gray:
Q And did you vote in the last municipal election?
A Sure did.
Q Have you always lived in Birmingham?
A Not always.
Q Have you kept up with the controversy about the dog racing issue?
A Yes.
Q What side of the issue are you on?

Ms. Sanders: Your honor, we object, that's —

Judge Dubina: Sustained. I sustain that.

By Mr. Gray:
Q Let me ask you this, in what way does the election on Tuesday adversely affect you?
A Well, basically I wouldn't be able to go vote Tuesday no way.
Q Why?
A My kids, I have to get them registered in school.
Q Are you adversely affected any other way other than that?
A Yes.
Q How?
A Okay. For instance, say the way they've got their dog racing bill going, all it has is vote yes for dog racing, you know, it's

not telling you anything about it. It's just a whole lot of things that I would like to know about the dog racing bill that I don't know, and I'm quite sure a lot of other people would, too.

Q Did you participate in the horse racing election?

A Yes, I did.

Q And were you able to get all the information that you needed in order for you to vote intelligently on that issue?

A Not all of the information, but I got more than what I'm getting now.

Q Have you been listening to the commercials on television?

A Yes.

Q Reading the newspapers?

A Yeah, on and off.

Q You know how to contact the people on each side in order to get information, don't you?

A Not really.

Q Have you attempted to get any additional information?

Ms. Sanders: Your honor, this is irrelevant as to what she attempted.

Judge Dubina: Sustained.

Ms. Sanders: She has no obligation to —

Judge Dubina: Sustained.

By Mr. Gray:

Q Other than what you have testified to, what other way have you personally been adversely affected by the referendum that's to take place on Tuesday?

Mr. Williams: Your honor, I would object, I don't —

Judge Dubina: Overruled. She can tell us how she's personally been affected, if at all.

The Witness: Well, I would like to vote, but like I say, it's at a bad time for me, and a lot of other people, too. Okay. Tuesday is going to be hectic. As a matter of fact, this month here anyway, by the kids going back to school.

By Mr. Gray:

Q So you're saying only because it's during the school period of time is why you're adversely affected?

A Not only that. Like I say, I need more information on what's going on.

Q And that information is coming through the media, isn't it?

A No, not really.

Ms. Sanders: We object to that, your honor.

Judge Dubina: I sustain.

By Mr. Gray:

Q Have you sought to get that information before you —

Ms. Sanders: We object, your honor.

Judge Dubina: Let him finish his question first. Please repeat your question.

By Mr. Gray:

Q Have you sought to get any additional information that you may need on this issue before you became upon it [sic] in this lawsuit?

Judge Dubina: Overruled. I'll let her answer that, if she can.

The Witness: Yes.

By Mr. Gray:

Q Were you able to get it?

A No.

Q Where did you go to get additional information?

Ms. Sanders: Your honor, we think all these questions about additional information has nothing to do with this witness' standing to raise these issues.

Judge Dubina: Well, it goes to whether or not she's personally affected, or it could go to it. Overrule the objection.

The Witness: Okay. The only information I can get is we've got a dog racing bill going on. I want to know what the bill is all about, I want to know how is it being drawn up. I can't get that information, nobody has given it to me, I've asked for it but I haven't received any.

By Mr. Gray:

Q Have you followed the newspaper accounts when the bill was pending in the legislature?

A No.

Q Did you read the Birmingham News this past week?

Ms. Sanders: Your honor, I would like to renew this objection to this line of questioning for this reason, the law requires us to show the potential for discrimination against Blacks, not this one particular person.

Judge Propst: Are you all claiming that the date of the election impacts in any way on her being able to get information about how to vote?

Ms. Sanders: No, your honor. We submit that the fact that they hurriedly set this election without preclearance affected the population's ability to learn more about this bill. Right now you have two sides giving their narrow —

Judge Propst: Well, is that your position?

Ms. Sanders: What is that, your honor?

Judge Propst: That the date of the election impacts on her ability to learn something about it.

Ms. Sanders: No, that's her layman's understanding of her claim. I think the court will take judicial notice that lawyers will have a different understanding of what their claim is.

Judge Propst: Well, my point is, the relevance of his question may depend upon whether you do or do not take that position, is what I was suggesting.

Ms. Sanders: That has not been our official position, your honor, but as she talks it may very well have some effect.

Judge Dubina: That's why I'm going to overrule your objection, because it may be relevant.

By Mr. Gray:

Q Go ahead.

A What was your question?

Judge Dubina: I think the last question was, did you read the Birmingham News last week?

The Witness: Okay. No, I did not.

By Mr. Gray:

Q As a matter of fact — well, if you didn't read it, you didn't know that there was a front page story, three articles on the front page discussing the bill?

A No, I didn't.
Q Had you checked the newspapers even before then to determine any information on it?
A I have really — I've checked the newspaper on and off, I don't constantly go through the paper every day, no.
Q Now, you mentioned about getting — that it was inconvenient because you have to get your children ready for school. How many children to you have?
A I have three kids.
Q What ages?
A Fourteen, ten and five.
Q And what schools do they attend?
A Holy Family and Jackson-Olin.
Q Holy Family?
A Yes.
Q And what?
A Jackson-Olin.
Q Now, when will school open at Holy Family?
A School will open at Holy Family Tuesday.
Q Tuesday?
A Yes.
Q At what time?
A I guess it's about 7:30, 8:00 o'clock.
Q And your other child?
A My other child?
Q Yes.
A She will start to school Monday I think.
Q She will start Monday?
A Uh-huh.
Q At what school?
A Jackson-Olin.
Q And the other one?
A I've got two at Holy Family.
Q All right. So then, the one on Monday will already be in school, so that will not adversely affect you as far as Tuesday is concerned, is that correct?
A Yes.

Q And on Tuesday at Holy Family, you said they're in school at 7:30?

A Uh-huh.

Q Do you know what time the polls open?

A 7:00 o'clock.

Q So, then, you would have the rest of the day, and since you're unemployed, you would still be available to vote if you wanted, wouldn't you?

A No, I wouldn't have the rest of the day.

Q But your children would be in school at that time, wouldn't they?

A Yes, they would.

Q So, then, their being in school would not stop you from going to vote if you wanted to, would it?

A I want to but I won't have time to, I have other things scheduled, my calendar is already preplanned and I have other things scheduled, I don't have time for that, I'm trying to get myself in order. Okay? All I want to know is about the bill.

Q I see.

A Okay.

Q Did you notice in the newspapers back in April, or March 25th, April 1st, 8th and 15th, 1991 — Let me just show you this. I show you, Ms. Harris, that [sic] purports to be the newspaper notice showing that a dog racing bill would be introduced in the legislature, did you see that in the newspaper on either one of those four occasions?

A No, I didn't.

Judge Nelson: I'm sorry, I can't hear you, Please, ma'am.

The Witness: I said no.

By Mr. Gray:

Q Would it be fair to say that your real interest in this bill is something of relatively recent origin?

A No.

Q But whatever your other business activities, you value them more important than going to vote on Tuesday?

A I think they are more important than going to vote on Tuesday.

Mr. Gray: Thank you very much.

The Witness: Okay.

Judge Dubina: Questions by any other defense counsel? Any other questions by plaintiff's counsel?

Ms. Sanders: Yes.

REDIRECT EXAMINATION

By Ms. Sanders:

Q Ms. Harris, do you know when the mayoral election is set for?

A In October.

Q In October.

A Uh-huh.

Q Since you've been a voter can you recall how many times the elections have been set that close together?

A No, not right offhand.

Q What effect if any will the mayoral election being set close to this election have on your voting patterns?

A Well, first of all, I wouldn't vote, it's too close together, number one. Okay. How can I put it? Nine times out of ten most people are not going to go vote just for the dog racing, they'll go vote for the people, you know. There's nobody in that one.

Q Now, the times that you've read the newspaper articles dealing with the track, do you recall any article that informed you that they had changed the voting laws, changed the voting procedures for voting on this act compared to past acts, was that ever told to you?

A No.

Mr. May: Objection, your honor, that calls for a legal conclusion.

Judge Dubina: Sustained. Stricken from the record.

By Ms. Sanders:

Q Well, is there any — have you ever been told or shown, or anything to show that whatever is in the Birmingham News is correct?

A No.

Q Has anyone ever told you or gave you reason to believe that everything that is on the radio is correct?

A No.

Q Has anyone given you any document or anything purporting, outside of your attorneys, any document or any papers to show actually what that bill is about other than what you may have heard on television or the radio?

A No.

Mr. May: Your honor, I object.

Judge Dubina: Overruled.

By Ms. Sanders:

Q Do you know whether or not the people at the Birmingham News support the dog track?

A No.

Mr. May: Objection.

Judge Dubina: Sustained. She couldn't possibly know what someone else at the Birmingham News thinks about the dog track. The editors may have taken a position in an editorial page that she could have read, but that's not the question you asked her. So I sustain the question.

By Ms. Sanders:

Q To rephrase the question, have you ever read an editorial of any writers in the Birmingham News or any other paper that showed their position on this bill?

A No.

Ms. Sanders: I think that's all.

Judge Dubina: Anything else?

Mr. Gray: Yes, sir.

RECROSS EXAMINATION

By Mr. Gray:

Q What other election is being taken care of on Tuesday?

A What other election?

Q Yes, other than dog racing.

A It's been quite a few others but I just can't recall.

Q Can you tell this court any other election that the people are going to vote on on Tuesday other than dog racing?

Ms. Sanders: Your honor, we would object on irrelevant, the other election has nothing to do with whether or not this —

Judge Dubina: Well, it might go to how she's personally affected. Overruled.

The Witness: No.

By Mr. Gray:

Q You don't know of any others?

A I can't think of it.

Q Now — just one moment. Maybe I misunderstood you, Ms. Harris, I thought when I was examining you you indicated that you did not or had not read any articles in the newspapers about the dogs. Did I misunderstand you?

A You misunderstood me.

Q Okay. So you did — what articles did you read in the paper about them?

A I read that they were trying to pass a bill on dog racing. I'm not against dog racing, I just want to know about dog racing, period, like the two percent that the state is going to get. Okay? I want to know the details.

Q The details of the bill?

A Of the bill, yeah.

Q But you haven't opted to read it?

A I have read it, like I say, from my attorneys, I've read what they've given me as far as that's concerned.

Q Now, Ms. Harris, will you tell this court, as a result of you being the plaintiff in this lawsuit, and based on the way you say you have been and will be affected by the referendum, what are you asking this court to do for you?

A For me?

Q Yes.

A There's about two things in there that I feel that it's going to affect me and a lot of other people, is that two percent deal, as far as the two percent or whatever the state is going to get, Birmingham is going to get, okay, the clause in there, I think they should get more than two percent.

Q And what else?

A Okay. And then the clause where it says that he's going to be the only owner.

Q Mr. McGregor?

A Yes.

Q Okay.

A I think it should be for the people.

Q What else?

(No response)

Q So, if this court were to enter an order in effect saying that Mr. McGregor should not be the sole owner, and if an order were entered saying that the state should get more than two percent, you would be satisfied, is that correct?

Ms. Sanders: We would object to this because — I know your honor is giving a lot of latitude to go into certain questions, but this lady is not a lawyer, that she generally objects. It's clear, the issue before this court today is purely about the voting rights matter, it does not deal with all the other things that does meet her concerns in this litigation.

Judge Dubina: She's not a lawyer, but as a party plaintiff she does have a prayer for relief in her complaint, and I think defense counsel is entitled to ask her what she wants this court to do for her in the event she prevails, so I'm going to overrule it. I think she can answer that question.

By Mr. Gray:

Q You may please answer.

A Like I said, change their rules, change at least those two main rules anyway.

Q And that's really all you're asking this court to do, isn't it?

Mr. Williams: Your honor, I would object.

Judge Dubina: Overruled.

Ms. Sanders: Your honor, she's already testified that the voting date is a problem with her, I think —

Judge Dubina: Well, it may be something else that she wants the court to do, I don't know.

By Mr. Gray:

Q Well, just tell the court, you have three judges here, tell this court — you've told us two things you want them to do. Now, is there anything else you want this court to do?

A Give —

Mr. Williams: Well, you honor —

Judge Propst: Let her answer it, let's don't have any coaching or whatever.

Mr. Williams: All right.

The Witness: Give the people enough time to find out what's really going on as far as this dog track is concerned, that's all I'm really asking basically, okay, and those other two things there, because right now don't nobody know nothing, all they know is what people tell you, vote on the dog racing. Like I say —

Mr. Gray: Thank you very much, Ms. Harris. I appreciate it.

The Witness: Okay.

Ms. Sanders: That's all.

Judge Dubina: Anything else? You may step down. Thank you, ma'am. Call your next witness for the plaintiff.

Mr. Baker: If your honors please, I want to make sure I understand the stipulation I think we have entered into, and that is that the city counsel and the city of Birmingham is composed of nine members, six of whom are black and three are white, am I correct? Then I can excuse that witness. Thank you.

Judge Dubina: Thank you, sir. That witness is excused. Call your next witness for the plaintiff.

State of Alabama)
:
Jefferson County)

AFFIDAVIT OF NELL HUNTER

I, Nell Hunter, being duly sworn according to law, do hereby state as follows:

1. I am, and for some years past have been, the Chairman of the Board of Registrars of Jefferson County, Alabama.

2. As such official, I prepare and maintain voting records and statistics for Jefferson County, which records include, inter alia, the number of registered voters in the County, the location of each voting box at each election in the County and the number of registered voters entitled to vote at such box, and the name and race of each voter eligible to vote at each of the voting boxes. I also have access to the official results of each election held in Jefferson County which are tabulated and canvassed for each voting box where voters vote in person on election day and for each location where absentee ballots are cast.

3. The City of Birmingham is a municipality in Jefferson County, Alabama. Although a small part of the City of Birmingham is located in adjacent Shelby County, the overwhelming majority of the citizens and voters of the City of Birmingham reside in that part of the City located in Jefferson County.

4. On August 27, 1991, a referendum was held in Jefferson County on the question of authorizing greyhound racing and pari-mutuel wagering thereon to be conducted in that part of the City of Birmingham located in Jefferson County. With respect to that referendum, the records of my office show as follows:

> (a) The total number of registered voters in Jefferson County (including the City of Birmingham) amounted to 344,926, of which 234,463 or 67.98% were white and 110,463 or 32.02% were black.

(b) The total number of registered voters of the City of Birmingham who resided in Jefferson County amounted to 134,099, of which 53,857 or 40.16% were white and 80,242 or 59.84% were black.

(c) Based on information provided to me by the official of Shelby County in charge of voter registration, the number of registered voters in the City of Birmingham who resided in Shelby County amounted to 82, of which 81 were white and one was black. Since the referendum of August 27, 1991, concerned only the authorization of greyhound racing in Jefferson County and no other county, the referendum was restricted by state law to voters in Jefferson County, and no voters who lived in that part of the City of Birmingham located in Shelby County were permitted to vote in the referendum.

(d) 146,036 voters of Jefferson County (including voters residing in the City of Birmingham) cast votes in the greyhound referendum, and 55,051 voters of the City of Birmingham cast votes in the greyhound referendum.

(e) Of the 146,036 voters of Jefferson County who voted in the greyhound referendum (including voters in the City of Birmingham), 66,747 voted "Yes" in favor of authorizing greyhound racing and 79,289 voted "No" against authorizing greyhound racing.

(f) Of the 55,051 voters of the City of Birmingham who voted in the greyhound referendum, 34,108 voted "Yes" in favor of authorizing greyhound racing and 20,943 voted "No" against authorizing greyhound racing.

(g) There were 175 voting boxes at which votes were cast in that election. Of those voting boxes, 60 were boxes in which the majority of registered voters were black.

(h) In each of the 60 boxes where a majority of the registered voters were black, a majority of the votes cast were "Yes" in favor of authorizing greyhound racing.

(i) Of the 115 voting boxes in which a majority of the registered voters were white, only 8 boxes showed a majority "Yes" vote in favor of authorizing greyhound racing. In five of those boxes, black voters amounted to more than 47% of the total registered voters.

5. Attached to and made a part of this affidavit is a tabulation prepared by my office showing (i) a true and correct division of the total registered voters in each voting box between white voters and black voters as of the date of the greyhound referendum, (ii) a true and correct accounting by voting box of the number of voters who voted in the greyhound referendum (excluding absentee votes) and the number of "Yes" and "No" votes cast in each voting box, and (iii) a true and correct tabulation of the absentee votes cast in the greyhound referendum.

/s/ Nell Hunter
Nell Hunter

Sworn to and subscribed before me, Kathleen Webster, a Notary Public in and for Jefferson County in the State of Alabama, this 8th day of January, 1992.

/s/ Kathleen Webster
Notary Public

My Commission expires: July 20, 1992

[NOTARIAL SEAL]

Greyhound Referendum Held in Jefferson County on August 27, 1991 Voter Registration By Voting Box and Results of Greyhound Referendum By Voting Box

As of August 27, 1991, the date on which the referendum on greyhound racing was held that is the subject of *Harris v. City of Birmingham*, the following table shows the number of registered voters in the City of Birmingham and Jefferson County and the respective numbers of black and white voters in each such jurisdiction:

Jurisdiction	Total Registered Voters	Number Black Voters	% Black Voters	Number White Voters	% White Voters
City of Birmingham	134,099	80,242	59.84%	53,857	40.16%
Jefferson County (including Birmingham)	344,926	110,463	32.02%	234,463	67.98%

The results of the greyhound referendum held on August 27, 1991 (including absentee ballots), are as follows:

Jurisdiction	Total Votes Cast	Yes Votes	No Votes
City of Birmingham	55,051	34,108	20,943
Jefferson County (including Birmingham)	146,036	66,747	79,289

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

43/01 BURKETT CENTER FOR HANDICAPPED
88 LONG STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,201		Total	433	36.05%
White	1,120	93.26%	Yes	169	39.03%
Black	81	6.74%	No	264	60.97%

43/02 FULTONDALE COMMUNITY CENTER
INTERSEC PARK AND SPRING

Registered Voters			Greyhound Referendum Votes		
Total	3,295		Total	1,393	42.28%
White	3,195	96.97%	Yes	495	35.53%
Black	100	3.03%	No	898	64.47%

43/03 GARDENDALE CIVIC CENTER
962 MAIN STREET

Registered Voters			Greyhound Referendum Votes		
Total	5,373		Total	2,781	51.76%
White	5,317	98.96%	Yes	703	25.28%
Black	56	1.04%	No	2,078	74.72%

43/04 MT. OLIVE COMMUNITY CENTER
2684 MT. OLIVE RD.

Registered Voters			Greyhound Referendum Votes		
Total	924		Total	471	50.97%
White	921	99.68%	Yes	108	22.93%
Black	3	.32%	No	363	77.07%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

43/05 NEW CASTLE UNITED METH. CHURCH
98 B NEW CASTLE RD.

Registered Voters			Greyhound Referendum Votes		
Total	467		Total	188	40.26%
White	365	78.16%	Yes	107	56.91%
Black	102	21.84%	No	81	43.09%

43/06 MORRIS MASONIC HALL
OLD HIGHWAY 31

Registered Voters			Greyhound Referendum Votes		
Total	1,125		Total	522	46.40%
White	1,117	99.29%	Yes	156	29.89%
Black	8	.71%	No	366	70.11%

43/07 KIMBERLY CITY HALL
9256 STOUTS RD.

Registered Voters			Greyhound Referendum Votes		
Total	883		Total	360	40.77%
White	862	97.62%	Yes	94	26.11%
Black	21	2.38%	No	266	73.89%

43/08 TRAFFORD CITY HALL
9239 EAST COMMERCIAL AVE.

Registered Voters			Greyhound Referendum Votes		
Total	570		Total	195	34.21%
White	560	98.25%	Yes	84	43.08%
Black	10	1.75%	No	111	56.92%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

43/09 KERMIT A. JOHNSON ELEM. SCHOOL
8300 KERMIT JOHNSON RD.

Registered Voters			Greyhound Referendum Votes		
Total	1,612		Total	640	39.70%
White	1,517	94.11%	Yes	205	32.03%
Black	95	5.89%	No	435	67.97%

43/10 PALMERDALE FIRE STATION
5340 MILES SPRING RD.

Registered Voters			Greyhound Referendum Votes		
Total	1,215		Total	528	43.46%
White	1,129	92.92%	Yes	163	30.87%
Black	86	7.08%	No	365	69.13%

43/11 PINSON CIVITAN CLUB
6230 DRY CREEK LN.

Registered Voters			Greyhound Referendum Votes		
Total	969		Total	472	48.71%
White	966	99.69%	Yes	151	31.99%
Black	3	.31%	No	321	68.01%

43/12 CLAY COMMUNITY CENTER
6411 CLAY-PALMERDALE RD.

Registered Voters			Greyhound Referendum Votes		
Total	2,938		Total	1,342	45.68%
White	2,916	99.25%	Yes	418	31.15%
Black	822	.75%	No	924	68.85%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

43/13 MOUNTAIN VIEW BAPTIST CHURCH
5568 CHALKVILLE RD.

Registered Voters			Greyhound Referendum Votes		
Total	883		Total	418	47.34%
White	862	97.62%	Yes	142	33.97%
Black	21	2.38%	No	276	66.03%

44/01 PINSON UNITED METHODIST CHURCH
4507 BUD HOLMES RD.

Registered Voters			Greyhound Referendum Votes		
Total	2,023		Total	895	44.24%
White	1,991	98.42%	Yes	278	31.06%
Black	32	1.58%	No	617	68.94%

44/02 CENTER POINT ELEMENTARY SCHOOL
2209 CENTER POINT RD.

Registered Voters			Greyhound Referendum Votes		
Total	5,199		Total	2,381	45.80%
White	5,003	96.23%	Yes	694	29.15%
Black	196	3.77%	No	1,687	70.85%

44/03 CENTER POINT COURTHOUSE ANNEX
2651 CENTER POINT PARKWAY

Registered Voters			Greyhound Referendum Votes		
Total	3,911		Total	1,854	47.40%
White	3,821	97.70%	Yes	543	29.29%
Black	90	2.30%	No	1,311	70.71%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

44/04 CHALKVILLE CIVIC CENTER
2100 CIVITAN DR.

Registered Voters			Greyhound Referendum Votes		
Total	2,315		Total	1,055	45.57%
White	2,274	98.23%	Yes	339	32.13%
Black	41	1.77%	No	716	67.87%

44/05 BREWSTER ROAD BAPTIST CHURCH
1661 BREWSTER ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,645		Total	1,751	48.04%
White	3,574	98.05%	Yes	537	30.67%
Black	71	1.95%	No	1,214	69.33%

44/06 TRUSSVILLE CITY HALL
131 MAIN STREET

Registered Voters			Greyhound Referendum Votes		
Total	3,531		Total	1,934	54.77%
White	3,414	96.69%	Yes	508	26.27%
Black	117	3.31%	No	1,426	73.73%

45/01 BARRETT SCHOOL
7605 DIVISION AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	2,108		Total	936	44.40%
White	1,717	81.45%	Yes	412	44.02%
Black	391	18.55%	No	524	55.98%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

45/02 ROBINSON SCHOOL
8400 1ST AVENUE SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	3,034		Total	1,380	45.48%
White	2,801	92.32%	Yes	433	31.38%
Black	233	7.68%	No	947	68.62%

45/03 DON HAWKINS COMMUNITY CENTER
8920 ROEBUCK BLVD.

Registered Voters			Greyhound Referendum Votes		
Total	2,497		Total	1,366	54.71%
White	2,441	97.76%	Yes	305	22.33%
Black	56	2.24%	No	1,061	77.67%

45/04 HUFFMAN ELEMENTARY SCHOOL
517 HUFFMAN ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,880		Total	1,627	56.49%
White	2,836	98.47%	Yes	402	24.71%
Black	44	1.53%	No	1,225	75.29%

45/05 NORTH ROEBUCK SCHOOL
300 RED LANE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,164		Total	1,185	54.76%
White	2,124	98.15%	Yes	368	31.05%
Black	40	1.85%	No	817	68.95%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

45/06 ANDREW GAVIN FAMILY LIFE BLG.
980 HUFFMAN ROAD

Registered Voters			Greyhound Referendum Votes		
Total	4,127		Total	2,095	50.76%
White	4,021	97.43%	Yes	669	31.93%
Black	106	2.57%	No	1,426	68.07%

45/07 L. M. SMITH SCHOOL
1124 FIVE MILE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	4,154		Total	2,042	49.16%
White	3,735	89.91%	Yes	734	35.95%
Black	419	10.09%	No	1,308	64.05%

45/08 FIRE STATION #28
2501 CARSON ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,468		Total	1,177	47.69%
White	2,229	90.32%	Yes	392	33.31%
Black	239	9.68%	No	785	66.69%

46/01 MTN. CHAPEL METHODIST CHURCH
2541 ROCKY RIDGE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	4,086		Total	1,839	45.01%
White	4,048	99.07%	Yes	474	25.77%
Black	38	.93%	No	1,365	74.23%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

46/02 VESTAVIA CITY HALL
513 MONTGOMERY HIGHWAY

Registered Voters			Greyhound Referendum Votes		
Total	2,607		Total	1,244	47.72%
White	2,596	99.58%	Yes	367	29.50%
Black	11	.42%	No	877	70.50%

46/03 MOUNTAIN BROOK GRAMMAR SCHOOL
3020 CAMBRIDGE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,386		Total	683	49.28%
White	1,382	99.71%	Yes	190	27.82%
Black	4	.29%	No	493	72.18%

46/04 FIRE STATION — LOCKSLEY
3785 LOCKSELY DRIVE MT. BR.

Registered Voters			Greyhound Referendum Votes		
Total	3,158		Total	1,515	47.97%
White	3,152	99.81%	Yes	441	29.11%
Black	6	.19%	No	1,074	70.89%

46/05 OVERTON RD. UNITED METHODIST CH.
4856 OVERTON ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,834		Total	856	46.67%
White	1,694	92.37%	Yes	308	35.98%
Black	140	7.63%	No	548	64.02%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

46/06 MOUNTAIN BROOK JUNIOR HIGH SCH.
205 OVERBROOK ROAD

Registered Voters			Greyhound Referendum Votes		
Total	4,839		Total	2,073	42.84%
White	4,662	96.34%	Yes	670	32.32%
Black	177	3.66%	No	1,403	67.68%

46/07 CAHABA HEIGHTS ELEMENTARY SCH.
4401 DOLLYRIDGE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,039		Total	1,345	44.26%
White	3,015	99.21%	Yes	412	30.63%
Black	24	.79%	No	933	69.37%

46/08 LEEDS HIGH SCHOL
602 WHITMIRE STREET

Registered Voters			Greyhound Referendum Votes		
Total	2,624		Total	1,138	43.37%
White	2,420	92.23%	Yes	410	36.03%
Black	204	7.77%	No	728	63.97%

46/09 BROOKWOOD BAPTIST CHURCH
3449 OVERTON ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,352		Total	1,526	45.53%
White	3,331	99.37%	Yes	497	32.57%
Black	21	.63%	No	1,029	67.43%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

47/01 HIGHLAND RACQUET CLUB
3300 HIGHLAND AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	932		Total	404	43.35%
White	898	96.35%	Yes	154	38.12%
Black	34	3.65%	No	250	61.88%

47/02 AVONDALE SCHOOL
4000 8TH COURT SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	1,865		Total	879	47.13%
White	1,839	98.61%	Yes	287	32.65%
Black	26	1.39%	No	592	67.35%

47/03 DONALD COMER ELEMENTARY SCHOOL
1220 50TH STREET SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	2,509		Total	1,255	50.02%
White	2,280	90.87%	Yes	464	36.97%
Black	229	9.13%	No	791	63.03%

47/04 WOODLAWN FIRE STATION
15 57TH STREET SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	1,387		Total	600	43.26%
White	1,027	74.04%	Yes	239	39.83%
Black	360	25.96%	No	361	60.17%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

47/05 MOUNTAIN BROOK CITY HALL
56 CHURCH STREET

Registered Voters			Greyhound Referendum Votes		
Total	2,639		Total	1,346	51.00%
White	2,636	99.89%	Yes	409	30.39%
Black	3	.11%	No	937	69.61%

47/06 McELWAIN BAPTIST CHURCH
4445 MONTEVALLO ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,767		Total	1,679	44.57%
White	3,606	95.73%	Yes	632	37.64%
Black	161	4.27%	No	1,047	62.36%

47/07 IRONDALE CITY HALL
101 20TH STREET SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	3,104		Total	1,384	44.59%
White	2,574	82.93%	Yes	576	41.62%
Black	530	17.07%	No	808	58.38%

47/08 EAST JEFFERSON CO. FIRE DEPT.
2603 ALTON ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,448		Total	1,157	47.26%
White	2,244	91.67%	Yes	346	29.90%
Black	204	8.33%	No	811	70.10%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

47/09 LEEDS ARMORY
802 PARKWAY DRIVE SW

Registered Voters			Greyhound Referendum Votes		
Total	1,304		Total	463	35.51%
White	803	61.58%	Yes	2246	53.13%
Black	501	38.42%	No	217	46.87%

47/10 KNESSETH ISRAEL SYNAGOGUE
3225 MONTEVALLO ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,037		Total	430	41.47%
White	1,032	99.52%	Yes	126	29.30%
Black	5	.48%	No	304	70.70%

48/01 VALLEY UNITED METHODIST CHURCH
1934 PATTON CHAPEL RD.

Registered Voters			Greyhound Referendum Votes		
Total	3,328		Total	1,530	45.97%
White	3,283	98.65%	Yes	430	28.10%
Black	45	1.35%	No	1,100	71.90%

48/02 OAKMONT PRESBYTERIAN CHURCH
1817 PATTON CHAPEL ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,338		Total	1,128	48.25%
White	2,307	98.67%	Yes	354	31.38%
Black	31	1.33%	No	774	68.62%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

48/03 ROCKY RIDGE FIRST BAPT. CHURCH
2209 ROCKY RIDGE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,897		Total	1,655	42.47%
White	3,810	97.77%	Yes	537	32.45%
Black	87	2.23%	No	1,118	67.55%

48/04 ST. MARKS UNITED METH. CHURCH
2901 COLUMBIANA ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,696		Total	1,563	42.29%
White	3,623	98.02%	Yes	470	30.07%
Black	73	1.98%	No	1,093	69.93%

48/05 VESTAVIA PLAZA MALL — SEARS STR.
702 MONTGOMERY HIGHWAY

Registered Voters			Greyhound Referendum Votes		
Total	4,034		Total	1,923	47.67%
White	4,004	99.26%	Yes	594	30.89%
Black	30	.74%	No	1,329	69.11%

48/06 VESTAVIA HIGH SCHOOL
2235 LIMEROCK ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,532		Total	1,479	41.87%
White	3,494	98.92%	Yes	448	30.29%
Black	38	1.08%	No	1,031	69.71%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

48/07 HOOVER CITY COUNCIL CHAMBERS
1699 MONTGOMERY HIGHWAY

Registered Voters			Greyhound Referendum Votes		
Total	3,283		Total	949	28.91%
White	3,169	96.53%	Yes	323	34.04%
Black	114	3.47%	No	626	65.96%

49/01 CHARLES A. BROWN SCHOOL
4811 COURT J

Registered Voters			Greyhound Referendum Votes		
Total	2,523		Total	1,143	45.30%
White	1,318	52.24%	Yes	641	56.08%
Black	1,205	47.76%	No	502	43.92%

49/02 COMMUNITY HOUSE — ENSLEY
2800 AVENUE K

Registered Voters			Greyhound Referendum Votes		
Total	1,945		Total	766	39.38%
White	823	42.31%	Yes	494	64.49%
Black	1,122	57.69%	No	272	35.51%

49/03 WYLAM FIRE STATION #17
700 LEXINGTON STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,540		Total	575	37.34%
White	813	52.79%	Yes	311	54.09%
Black	727	47.21%	No	264	45.91%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

49/04 CIVIC CLUB FAIRFIELD HIGHLANDS
903 8TH AVE. MIDFIELD

Registered Voters			Greyhound Referendum Votes		
Total	1,271		Total	565	44.45%
White	1,124	88.43%	Yes	188	33.27%
Black	147	11.57%	No	377	66.73%

49/05 GLEN OAKS SCHOOL
1021 HIGHLAND DRIVE

Registered Voters			Greyhound Referendum Votes		
Total	2,704		Total	1,077	39.83%
White	1,279	47.30%	Yes	624	57.94%
Black	1,425	52.70%	No	453	42.06%

49/06 PLEASANT GROVE COMMUNITY HOUSE
530 PARK ROAD

Registered Voters			Greyhound Referendum Votes		
Total	5,241		Total	2,461	46.96%
White	5,099	97.29%	Yes	760	30.88%
Black	142	2.71%	No	1,701	69.12%

49/07 HUEYTOWN ALTERNATIVE SCHOOL
2058 A HIGH SCHOOL ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,214		Total	1,257	39.11%
White	2,208	68.70%	Yes	480	38.19%
Black	1,006	31.30%	No	777	61.81%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

49/08 SYLVAN SPRINGS COMM. CENTER
130 ROCK CREEK RD.

Registered Voters			Greyhound Referendum Votes		
Total	941		Total	452	48.03%
White	932	99.04%	Yes	159	35.18%
Black	9	.96%	No	293	64.82%

49/09 MAYTOWN CITY HALL
853 OLD PORTER RD.

Registered Voters			Greyhound Referendum Votes		
Total	238		Total	143	60.08%
White	236	99.16%	Yes	55	38.46%
Black	2	.84%	No	88	61.54%

49/10 BOOKER HEIGHTS COMM. CENTER
5100 MAIN ST.

Registered Voters			Greyhound Referendum Votes		
Total	150		Total	40	26.67%
White	2	1.33%	Yes	37	92.50%
Black	148	98.67%	No	3	7.50%

50/01 BESSEMER TECHNICAL COLLEGE
1100 9TH AVENUE SW

Registered Voters			Greyhound Referendum Votes		
Total	1,589		Total	679	42.73%
White	1,361	85.65%	Yes	288	42.42%
Black	228	14.35%	No	391	57.58%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

50/02 EASTERN VALLEY COMM. CENTER
800 WALNUT STREET

Registered Voters			Greyhound Referendum Votes		
Total	2,619		Total	970	37.04%
White	2,434	92.94%	Yes	280	28.87%
Black	185	7.06%	No	690	71.13%

50/03 INDIAN FORD FIRE DEPARTMENT
4307 SO. SHADES CREST ROAD

Registered Voters			Greyhound Referendum Votes		
Total	472		Total	173	36.65%
White	451	95.55%	Yes	66	38.15%
Black	21	4.45%	No	107	61.85%

50/04 FLINT HILL FIRE STATION #4
595 FLINT HILL ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,284		Total	911	39.89%
White	1,727	75.61%	Yes	372	40.83%
Black	557	24.39%	No	539	59.17%

50/05 W. A. BELL HIGH SCHOOL
4933 BESSEMER JOHNS ROAD

Registered Voters			Greyhound Referendum Votes		
Total	558		Total	206	36.92%
White	352	63.08%	Yes	102	49.51%
Black	206	36.92%	No	104	50.49%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

50/06 HUEYTOWN CITY HALL
1318 HUEYTOWN ROAD

Registered Voters			Greyhound Referendum Votes		
Total	4,383		Total	1,749	39.90%
White	4,268	97.38%	Yes	537	30.70%
Black	115	2.62%	No	1,212	69.30%

50/07 VIRGINIA VOLUNTEER FIRE DEPT.
2979 CREEKVIEW ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,394		Total	565	40.53%
White	1,305	93.62%	Yes	159	28.14%
Black	89	6.38%	No	406	71.86%

50/08 JOHNS CITY HALL
4421 TOWN HALL DR.

Registered Voters			Greyhound Referendum Votes		
Total	675		Total	214	31.70%
White	472	69.93%	Yes	95	44.39%
Black	203	30.07%	No	119	55.61%

50/09 OAK GROVE HIGH SCHOOL
9180 LOCK 17 ROAD

Registered Voters			Greyhound Referendum Votes		
Total	905		Total	346	38.23%
White	883	97.57%	Yes	123	35.55%
Black	22	2.43%	No	223	64.45%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

50/10 CONCORD FIRE DEPARTMENT
1349 N. CHURCH ST.

Registered Voters			Greyhound Referendum Votes		
Total	2,334		Total	1,073	45.97%
White	2,287	97.99%	Yes	240	22.37%
Black	47	2.01%	No	833	77.63%

50/11 ALLIANCE COMMUNITY SCHOOL
1175 ALLIANCE RD.

Registered Voters			Greyhound Referendum Votes		
Total	1,231		Total	514	41.75%
White	1,200	97.48%	Yes	157	30.54%
Black	31	2.52%	No	357	69.46%

50/12 MASONIC LODGE WEST JEFFERSON
WEST JEFFERSON RD.

Registered Voters			Greyhound Referendum Votes		
Total	551		Total	205	37.21%
White	540	98.00%	Yes	58	28.29%
Black	11	2.00%	No	147	71.71%

50/13 ADAMSVILLE ELEMENTARY
4600 MIDWAY RD.

Registered Voters			Greyhound Referendum Votes		
Total	2,300		Total	843	36.65%
White	11,953	84.91%	Yes	255	30.25%
Black	347	15.09%	No	588	69.75%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

51/01 CITY HALL MULGA
505 MULGA ROAD

Registered Voters			Greyhound Referendum Votes		
Total	832		Total	297	35.70%
White	590	70.91%	Yes	110	37.04%
Black	242	29.09%	No	187	62.96%

51/02 FIRE STATION MINOR
1135 BROAD STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,619		Total	635	39.22%
White	1,005	62.08%	Yes	268	42.20%
Black	614	37.92%	No	367	57.80%

51/03 McDONALD CHAPEL COMM. CENTER
525 QUEBEC STREET

Registered Voters			Greyhound Referendum Votes		
Total	412		Total	174	42.23%
White	281	68.20%	Yes	81	46.55%
Black	131	31.80%	No	93	53.45%

51/04 MORNINGSTAR BAPTIST CHURCH
1600 SLAYDEN AVE.

Registered Voters			Greyhound Referendum Votes		
Total	217		Total	107	49.31%
White	2	.92%	Yes	101	94.39%
Black	215	99.08%	No	6	5.61%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

51/05 SANDUSKY FIRST BAPTIST CHURCH
800 PRATT HIGHWAY

Registered Voters			Greyhound Referendum Votes		
Total	981		Total	456	46.48%
White	951	96.94%	Yes	126	27.63%
Black	30	3.06%	No	330	72.37%

51/06 WESTWOOD CRUMLY CHAPEL COMM. C.
237 CRUMLEY CHAPEL ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,503		Total	1,164	46.50%
White	2,420	96.68%	Yes	328	28.18%
Black	83	3.32%	No	836	71.82%

51/07 SENIOR CITIZENS BUILDING
4819 MAIN STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,813		Total	755	41.64%
White	1,452	80.09%	Yes	287	38.01%
Black	361	19.91%	No	468	61.99%

51/08 MAURICE WEST COMMUNITY CENTER
2ND ST. S W GRAYSVILLE

Registered Voters			Greyhound Referendum Votes		
Total	1,711		Total	622	36.35%
White	1,249	73.00%	Yes	253	40.68%
Black	462	27.00%	No	369	59.32%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

51/09 BROOKSIDE CITY HALL
107 MARKET STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,370		Total	455	33.21%
White	1,297	94.67%	Yes	202	44.40%
Black	73	5.33%	No	253	55.60%

51/10 MT. OLIVE ELEMENTARY SCHOOL
1301 BROOKSIDE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,889		Total	851	45.05%
White	1,883	99.68%	Yes	184	21.62%
Black	6	.32%	No	667	78.38%

51/11 WARRIOR CITY HALL
215 MAIN STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,915		Total	590	30.81%
White	1,647	86.01%	Yes	204	34.58%
Black	268	13.99%	No	386	65.42%

51/12 CORNER SCHOOL
10005 CORNER SCHOOL RD.

Registered Voters			Greyhound Referendum Votes		
Total	1,045		Total	447	42.78%
White	1,043	99.81%	Yes	88	19.69%
Black	2	.19%	No	359	80.31%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

51/13 BAGLEY JUNIOR HIGH SCHOOL
8581 TATE MILL RD.

Registered Voters			Greyhound Referendum Votes		
Total	1,771		Total	692	39.07%
White	1,761	99.44%	Yes	179	25.87%
Black	10	.56%	No	513	74.13%

52/01 CRUMPTON RECREATION CENTER
346 GLORIA ROAD S W

Registered Voters			Greyhound Referendum Votes		
Total	2,473		Total	854	34.53%
White	11	.44%	Yes	687	80.44%
Black	2,462	99.56%	No	167	19.56%

52/02 SEMMIE LAVENDER COMM. CENTER
3136 JEFFERSON AVENUE S W

Registered Voters			Greyhound Referendum Votes		
Total	1,495		Total	563	37.66%
White	99	6.62%	Yes	461	81.88%
Black	1,396	93.38%	No	102	18.12%

52/03 CENTRAL PARK COMMUNITY CENTER
4700 TERRACE Q

Registered Voters			Greyhound Referendum Votes		
Total	2,152		Total	862	40.06%
White	1,337	62.13%	Yes	418	48.49%
Black	815	37.87%	No	444	51.51%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

52/04 LEE SCHOOL
630 18TH STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,585		Total	592	37.35%
White	160	10.09%	Yes	467	78.89%
Black	1,425	89.91%	No	125	21.11%

52/05 HARRISON PARK COMMUNITY CENTER
901 17TH STREET S W

Registered Voters			Greyhound Referendum Votes		
Total	3,077		Total	1,195	38.84%
White	126	4.09%	Yes	992	83.01%
Black	2,951	95.91%	No	203	16.99%

52/06 HEMPHILL SCHOOL REC. BUILDING
1240 COTTON AVENUE S W

Registered Voters			Greyhound Referendum Votes		
Total	2,752		Total	905	32.89%
White	533	19.37%	Yes	668	73.81%
Black	2,219	80.63%	No	237	26.19%

52/07 WENONAH ELEMENTARY SCHOOL
3008 WILSON ROAD S W

Registered Voters			Greyhound Referendum Votes		
Total	663		Total	300	45.25%
White	0	.00%	Yes	260	86.67%
Black	663	100.00%	No	40	13.33%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

52/08 JACKSON SCHOOL
1401 16TH WAYS W

Registered Voters			Greyhound Referendum Votes		
Total	1,704		Total	727	42.66%
White	21	1.23%	Yes	626	86.11%
Black	1,683	98.77%	No	101	13.89%

52/09 FIVE POINTS WEST LIBRARY
4620 AVENUE V ENSLEY

Registered Voters			Greyhound Referendum Votes		
Total	730		Total	304	41.64%
White	145	19.86%	Yes	225	74.01%
Black	585	80.14%	No	79	25.99%

53/01 RAMSAY HIGH SCHOOL
1800 13TH AVENUE SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	1,295		Total	306	23.63%
White	1,004	77.53%	Yes	141	46.08%
Black	291	22.47%	No	165	53.92%

53/02 HILL SCHOOL
507 3RD STREET NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,763		Total	684	38.80%
White	16	.91%	Yes	612	89.47%
Black	1,747	99.09%	No	72	10.53%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

53/03 GRAYMONT ELEMENTARY SCHOOL
300 8TH AVENUE WEST

Registered Voters			Greyhound Referendum Votes		
Total	2,509		Total	1,050	41.85%
White	113	4.50%	Yes	902	85.90%
Black	2,396	95.50%	No	148	14.10%

53/04 GLEN IRIS SCHOOL
1115 11TH STREET SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	2,996		Total	1,002	33.44%
White	2,562	85.51%	Yes	482	48.10%
Black	434	14.49%	No	520	51.90%

53/05 CENTER STREET SCHOOL
1832 CENTER WAY SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	2,945		Total	1,506	51.14%
White	20	.68%	Yes	1,285	85.33%
Black	2,925	99.32%	No	221	14.67%

53/06 WASHINGTON SCHOOL
115 4TH AVENUE SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	2,265		Total	887	39.16%
White	5	.22%	Yes	810	91.32%
Black	2,260	99.78%	No	77	8.68%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

53/07 ELYTON SCHOOL
#6 TUSCALOOSA AVENUE SW

Registered Voters			Greyhound Referendum Votes		
Total	559		Total	260	46.51%
White	71	12.70%	Yes	210	80.77%
Black	488	87.30%	No	50	19.23%

53/08 FRATERNAL ORDER OF POLICE BLDG.
2275 GREEN SPRINGS HWY.

Registered Voters			Greyhound Referendum Votes		
Total	1,126		Total	353	31.35%
White	937	83.21%	Yes	173	49.01%
Black	189	16.79%	No	180	50.99%

53/09 HIGHLAND MANOR APARTMENTS
2040 HIGHLAND AVENUE S

Registered Voters			Greyhound Referendum Votes		
Total	121		Total	81	66.94%
White	118	97.52%	Yes	28	34.57%
Black	3	2.48%	No	53	65.43%

54/01 ST. LUKE'S AME ZION CHURCH
3937 12TH AVENUE, NORTH

Registered Voters			Greyhound Referendum Votes		
Total	678		Total	262	38.64%
White	21	3.10%	Yes	240	91.60%
Black	657	96.90%	No	22	8.40%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

54/02 NORWOOD ARMORY
1313 27TH STREET NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,848		Total	591	31.98%
White	88	4.76%	Yes	506	85.62%
Black	1,760	95.24%	No	85	14.38%

54/03 McARTHUR SCHOOL
2418 17TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,147		Total	391	34.09%
White	68	5.93%	Yes	344	87.98%
Black	1,079	94.07%	No	47	12.02%

54/04 CITY AUDITORIUM
1930 8TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	2,021		Total	562	27.81%
White	12	.59%	Yes	473	84.16%
Black	2,009	99.41%	No	89	15.84%

54/05 WILKERSON SCHOOL
116 11TH COURT WEST

Registered Voters			Greyhound Referendum Votes		
Total	1,227		Total	534	43.52%
White	20	1.63%	Yes	456	85.39%
Black	1,207	98.37%	No	78	14.61%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

54/06 COURT HOUSE LOBBY
716 NORTH 21ST STREET

Registered Voters			Greyhound Referendum Votes		
Total	769		Total	151	19.64%
White	202	26.27%	Yes	125	82.78%
Black	567	73.73%	No	26	17.22%

54/07 AVONDALE LIBRARY
509 40TH STREET SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	903		Total	326	36.10%
White	529	58.58%	Yes	162	49.69%
Black	374	41.42%	No	164	50.31%

54/08 FIRE STATION #22
3114 CLAIRMONT AVE. S.

Registered Voters			Greyhound Referendum Votes		
Total	2,330		Total	896	38.45%
White	2,206	94.68%	Yes	381	42.52%
Black	124	5.32%	No	515	57.48%

54/09 SOUTHTOWN HOUSING COMM. CENTER
2501 UNIVERSITY BLVD.

Registered Voters			Greyhound Referendum Votes		
Total	459		Total	164	35.73%
White	11	2.40%	Yes	149	90.85%
Black	448	97.60%	No	15	9.15%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

54/10 PARKE MEMORIAL LIBRARY
1814 11TH AVENUE SOUTH

Registered Voters			Greyhound Referendum Votes		
Total	329		Total	104	31.61%
White	297	90.27%	Yes	44	42.31%
Black	32	9.73%	No	60	57.69%

54/11 CARRIE A. TUGGLE SCHOOL
412 12TH COURT NORTH

Registered Voters			Greyhound Referendum Votes		
Total	965		Total	394	40.83%
White	2	.21%	Yes	342	86.80%
Black	963	99.79%	No	52	13.20%

54/12 BETHEL BAPTIST CHURCH
3233 29TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	486		Total	236	48.56%
White	0	.00%	Yes	208	88.14%
Black	486	100.00%	No	28	11.86%

55/01 HOMEWOOD PARK REC. CENTER
1632 OXMOOR ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,916		Total	740	38.62%
White	1,652	86.22%	Yes	289	39.05%
Black	264	13.78%	No	451	60.95%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

55/02 FIRE STATION CARR AVENUE
430 CARR AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	3,766		Total	1,712	45.46%
White	3,575	94.93%	Yes	639	37.32%
Black	191	5.07%	No	1,073	62.68%

55/03 EDGEWOOD SCHOOL
901 COLLEGE AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	2,729		Total	1,266	46.39%
White	2,618	95.93%	Yes	369	29.15%
Black	111	4.07%	No	897	70.85%

55/04 HOMEWOOD LIBRARY
1721 OXMOOR ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,283		Total	1,161	50.85%
White	2,263	99.12%	Yes	318	27.39%
Black	20	.88%	No	843	72.61%

55/05 SHADES CAHABA SCHOOL
3001 MONTGOMERY HWY

Registered Voters			Greyhound Referendum Votes		
Total	2,254		Total	1,101	48.85%
White	2,154	95.56%	Yes	382	34.70%
Black	100	4.44%	No	719	65.30%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

55/06 SHADES CLIFF COMMUNITY CENTER
517 CLOUDLAND DRIVE

Registered Voters			Greyhound Referendum Votes		
Total	1,123		Total	545	48.53%
White	1,024	91.18%	Yes	181	33.21%
Black	99	8.82%	No	364	66.79%

55/07 SHADES CREST BAPTIST CHURCH
452 PARK AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	4,849		Total	2,218	45.74%
White	4,769	98.35%	Yes	706	31.83%
Black	80	1.65%	No	1,512	68.17%

55/08 PINE HAVEN BAPTIST CHURCH
3465 SHANNON-WENONAH RD.

Registered Voters			Greyhound Referendum Votes		
Total	706		Total	275	38.95%
White	535	75.78%	Yes	116	42.18%
Black	171	24.22%	No	159	57.82%

55/09 SHADY GROVE BAPTIST CHURCH
4644 LACEY CHAPEL ROAD

Registered Voters			Greyhound Referendum Votes		
Total	344		Total	146	42.44%
White	260	75.58%	Yes	53	36.30%
Black	84	24.42%	No	93	63.70%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

55/10 FIRE STATION MORGAN ROAD
2316 MORGAN ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,158		Total	947	43.88%
White	2,092	96.94%	Yes	286	30.20%
Black	66	3.06%	No	661	69.80%

55/11 HIGHLAND AVENUE FIRE STATION
2210 HIGHLAND AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	974		Total	419	43.02%
White	961	98.67%	Yes	148	35.32%
Black	13	1.33%	No	271	64.68%

56/01 SOUTHSIDE HOMES COMM. CENTER
2501 CLARENDON AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	2,321		Total	667	28.74%
White	15	.65%	Yes	550	82.46%
Black	2,306	99.35%	No	117	17.54%

56/02 THOMPSON MANOR COMM. CENTER
1520 EXETER COURT

Registered Voters			Greyhound Referendum Votes		
Total	1,492		Total	520	34.85%
White	760	50.94%	Yes	284	54.62%
Black	732	49.06%	No	236	45.38%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

56/03 ST. FRANCIS SCHOOL
2410 7TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	2,629		Total	854	32.48%
White	108	4.11%	Yes	705	82.55%
Black	2,521	95.89%	No	149	17.45%

56/04 BESSEMER CITY HALL
1800 3RD AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	2,021		Total	609	30.13%
White	995	49.23%	Yes	357	58.62%
Black	1,026	50.77%	No	252	41.38%

56/05 BESSEMER FIRE STATION #5
1715 LONG 12TH STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,236		Total	431	34.87%
White	268	21.68%	Yes	329	76.33%
Black	968	78.32%	No	102	23.67%

56/06 NATIONAL GUARD ARMORY
1101 2ND AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,673		Total	576	34.43%
White	456	27.26%	Yes	411	71.35%
Black	1,217	72.74%	No	165	28.65%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

56/07 JONESBORO ELEMENTARY SCHOOL
225 OWEN AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	2,445		Total	904	36.97%
White	1,689	69.08%	Yes	381	42.15%
Black	756	30.92%	No	523	57.85%

56/08 MUSCODA COMMUNITY CENTER
413 MORGAN ROAD

Registered Voters			Greyhound Referendum Votes		
Total	818		Total	310	37.90%
White	428	52.32%	Yes	166	53.55%
Black	390	47.68%	No	144	46.45%

56/09 WOODWARD ELEMENTARY SCHOOL
1101 ALEXANDER STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,646		Total	598	36.33%
White	310	18.83%	Yes	437	73.08%
Black	1,336	81.17%	No	161	26.92%

57/01 FAIRFIELD CITY HALL
4701 GARY AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	1,387		Total	469	33.81%
White	697	50.25%	Yes	280	59.70%
Black	690	49.75%	No	189	40.30%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

57/02 FAIRFIELD FIRE STATION
5231 COURT B

Registered Voters			Greyhound Referendum Votes		
Total	2,871		Total	1,025	35.70%
White	52	1.81%	Yes	869	84.78%
Black	2,819	98.19%	No	156	15.22%

57/03 MIDFIELD COMMUNITY CENTER
416 WOODWARD ROAD

Registered Voters			Greyhound Referendum Votes		
Total	3,371		Total	1,379	40.91%
White	2,620	77.72%	Yes	586	42.49%
Black	751	22.28%	No	793	57.51%

57/04 BRIGHTON SENIOR CITIZENS BLDG.
4400 MAIN STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,351		Total	377	27.91%
White	255	18.87%	Yes	291	77.19%
Black	1,096	81.13%	No	86	22.81%

57/05 BRIGHTON HIGH SCHOOL
3400 BROWN CIRCLE

Registered Voters			Greyhound Referendum Votes		
Total	1,120		Total	339	30.27%
White	20	1.79%	Yes	299	88.20%
Black	1,100	98.21%	No	40	11.80%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

57/06 ROOSEVELT MAMIE FOSTER CENTER
508 CENTRAL AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	1,770		Total	568	32.09%
White	15	.85%	Yes	471	82.92%
Black	1,755	99.15%	No	97	17.08%

57/07 LIPSCOMB CITY HALL
512 AVENUE H

Registered Voters			Greyhound Referendum Votes		
Total	1,560		Total	497	31.86%
White	761	48.78%	Yes	253	50.91%
Black	799	51.22%	No	244	49.09%

57/08 BRYANTS CHAPEL AME CHURCH
3125 SPAULDING ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,311		Total	948	41.02%
White	23	1.00%	Yes	808	85.23%
Black	2,288	99.00%	No	140	14.77%

57/09 RILEY SCHOOL
3420 HICKORY AVENUE S W

Registered Voters			Greyhound Referendum Votes		
Total	1,946		Total	744	38.23%
White	78	4.01%	Yes	636	85.48%
Black	1,868	95.99%	No	108	14.52%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

58/01 TARRANT CITY HALL
1604 PINSON VALLEY PKWY.

Registered Voters			Greyhound Referendum Votes		
Total	2,819		Total	1,187	42.11%
White	2,395	84.96%	Yes	454	38.25%
Black	424	15.04%	No	733	61.75%

58/02 FIRE STATION #29
1048 LAWSON ROAD

Registered Voters			Greyhound Referendum Votes		
Total	2,532		Total	1,015	40.09%
White	21	.83%	Yes	838	82.56%
Black	2,511	99.17%	No	177	17.44%

58/03 CURRY SCHOOL
7900 8TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,700		Total	585	34.41%
White	1,198	70.47%	Yes	307	52.48%
Black	502	29.53%	No	278	47.52%

58/04 GATE CITY SCHOOL
6910 GEORGIA ROAD

Registered Voters			Greyhound Referendum Votes		
Total	1,659		Total	629	37.91%
White	128	7.72%	Yes	506	80.45%
Black	1,531	92.28%	No	123	19.55%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

58/05 WILLOW WOOD RECREATION CENTER
5312 GEORGIA ROAD NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,944		Total	601	30.92%
White	552	28.40%	Yes	431	71.71%
Black	1,392	71.60%	No	170	28.29%

58/06 AL. YOUTH SERVICES VACCA CAMPUS
8950 ROEBUCK BLVD.

Registered Voters			Greyhound Referendum Votes		
Total	1,277		Total	548	42.91%
White	933	73.06%	Yes	259	47.26%
Black	344	26.94%	No	289	52.74%

58/07 OPORTO ARMORY
5601 OPORTO MADRID BLVD.

Registered Voters			Greyhound Referendum Votes		
Total	1,560		Total	549	35.19%
White	338	21.67%	Yes	402	73.22%
Black	1,222	78.33%	No	147	26.78%

59/01 INGLENOOK SCHOOL
4120 INGLENOOK STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,732		Total	714	41.22%
White	1,199	69.23%	Yes	328	45.94%
Black	533	30.77%	No	386	54.06%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

59/02 MORTON SIMPSON COMM. CENTER
4609 8TH COURT NORTH

Registered Voters			Greyhound Referendum Votes		
Total	2,044		Total	760	37.18%
White	28	1.37%	Yes	684	90.00%
Black	2,016	98.63%	No	76	10.00%

59/03 HUDSON SCHOOL
3300 F. L. SHUTTLESWORTH DR.

Registered Voters			Greyhound Referendum Votes		
Total	2,167		Total	824	38.02%
White	11	.51%	Yes	735	89.20%
Black	2,156	99.49%	No	89	10.80%

59/04 NORTH B'HAM RECREATION CENTER
3501 28TH STREET NORTH

Registered Voters			Greyhound Referendum Votes		
Total	2,173		Total	636	29.27%
White	319	14.68%	Yes	521	81.82%
Black	1,854	85.32%	No	115	18.08%

59/05 WRIGHT'S CHAPEL UN. METH. CHURCH
2133 32ND AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,572		Total	606	38.55%
White	114	7.25%	Yes	485	80.03%
Black	1,458	92.75%	No	121	19.97%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

59/06 HILLVIEW COMMUNITY CENTER
766 HEFLIN AVE. E

Registered Voters			Greyhound Referendum Votes		
Total	1,662		Total	816	49.10%
White	1,538	92.54%	Yes	267	32.72%
Black	124	7.46%	No	549	67.28%

59/07 HOOPER CITY RECREATION CENTER
3901 4TH STREET W

Registered Voters			Greyhound Referendum Votes		
Total	1,501		Total	661	44.04%
White	10	.67%	Yes	576	87.14%
Black	1,491	99.33%	No	85	12.86%

59/08 LEWIS SCHOOL
2015 26TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	1,047		Total	374	35.72%
White	6	.57%	Yes	322	86.10%
Black	1,041	99.43%	No	52	13.90%

59/09 HARRIMAN PARK RECREATON CNTR.
4345 HUNTSVILLE ROAD

Registered Voters			Greyhound Referendum Votes		
Total	415		Total	188	45.30%
White	4	.96%	Yes	165	87.77%
Black	411	99.04%	No	23	12.23%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

59/10 MT. PARK FIRST BAPTIST CHURCH
4360 44TH AVENUE NORTH

Registered Voters			Greyhound Referendum Votes		
Total	566		Total	255	45.05%
White	33	5.83%	Yes	201	78.82%
Black	533	94.17%	No	54	21.18%

60/01 MOUNT HEBRON BAPTIST CHURCH
503 5TH STREET THOMAS

Registered Voters			Greyhound Referendum Votes		
Total	936		Total	321	34.29%
White	152	16.24%	Yes	244	76.01%
Black	784	83.76%	No	77	23.99%

60/02 WOODROW WILSON SCHOOL
1030 4TH TERRACE WEST

Registered Voters			Greyhound Referendum Votes		
Total	2,409		Total	991	41.14%
White	470	19.51%	Yes	758	76.49%
Black	1,939	80.49%	No	233	23.51%

60/03 FAIRVIEW SCHOOL
2623 29TH STREET WEST

Registered Voters			Greyhound Referendum Votes		
Total	2,787		Total	1,065	38.21%
White	967	34.70%	Yes	732	68.73%
Black	1,820	65.30%	No	333	31.27%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

60/04 ENSLEY HIGH SCHOOL GYM
2301 AVENUE J

Registered Voters			Greyhound Referendum Votes		
Total	1,628		Total	528	32.43%
White	53	3.26%	Yes	469	88.83%
Black	1,575	96.74%	No	59	11.17%

60/05 McCAW SCHOOL
1020 AVENUE M

Registered Voters			Greyhound Referendum Votes		
Total	1,297		Total	527	40.63%
White	5	.39%	Yes	459	87.10%
Black	1,292	99.61%	No	68	12.90%

60/06 EAST ENSLEY PUBLIC LIBRARY
900 14TH STREET

Registered Voters			Greyhound Referendum Votes		
Total	1,507		Total	589	39.08%
White	6	.40%	Yes	538	91.34%
Black	1,501	99.60%	No	51	8.66%

60/07 HOWZE-SANFORD REC. CENTER
320 AVE. D

Registered Voters			Greyhound Referendum Votes		
Total	881		Total	338	38.37%
White	5	.57%	Yes	303	89.64%
Black	876	99.43%	No	35	10.36%

Voter Registration and Greyhound Referendum Results
by Voting Box
(Excluding Absentee Votes in Referendum)

****

60/08 FIRE STATION — PRATT CITY
200 DUGAN AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	1,547		Total	623	40.27%
White	128	8.27%	Yes	493	79.13%
Black	1,419	91.73%	No	130	20.87%

60/09 HILLVIEW ELEMENTARY SCHOOL
1520 CHERRY AVENUE

Registered Voters			Greyhound Referendum Votes		
Total	2,051		Total	948	46.22%
White	1,246	60.75%	Yes	449	47.36%
Black	805	39.25%	No	499	52.64%

60/10 GEORGE W. SCOTT SCHOOL
1517 HIBERNIAN STREET

Registered Voters			Greyhound Referendum Votes		
Total	2,395		Total	1,099	45.89%
White	12	.50%	Yes	916	83.35%
Black	2,383	99.50%	No	183	16.65%

Summary of Absentee Votes Cast in Greyhound Referendum

****

Absentee ballots are cast at the two courthouses in Jefferson County and are not accounted for by the voting boxes in which the absentee voters reside. The Absentee votes shown below for Jefferson County and the City of Birmingham are included in the total election results shown at the beginning of this report.

Jursidiction	Birmingham Courthouse	Bessemer Courthouse	Total Absentee Vote
City of Birmingham	415	20	435
Jefferson County (including Birmingham)	790	245	1,035

Supreme Court, U.S.
FILED
JAN 27 1992
OFFICE OF THE CLERK

No. 91-962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, *ET AL.*,

Appellees.

On Appeal from the United States District Court for the Northern District of Alabama

BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

PAMELA S. KARLAN
Counsel of Record
University of Virginia
School of Law
Charlottesville, Va. 22901
(804) 924-7810

ROSE M. SANDERS
Chestnut, Sanders, Sanders & Pettaway, P.C.
P.O. Box 1305
Selma, Alabama 36702
(205) 875-9264

EBEN MOGLEN
Columbia University
School of Law
435 West 116th Street
New York, N.Y. 10027
(212) 854-8382

Attorneys for Appellant

TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Introduction 1

I. Whether Birmingham's Black Citizens Want a Dog Racing Track is Completely Irrelevant to the Question of Section 5 Coverage 3

II. The City Has Directed its Claim that the Dog Racing Act Has Neither Discriminatory Purposes Nor Effects to the Wrong Audience 5

A. The City Seriously Distorts this Court's Analysis 5

B. If the City *Had* Submitted the Dog Racing Act for Preclearance, the Attorney General Might Well Have Found it to be Discriminatory . 8

III. This Case Is Not Moot 12

Conclusion 15

TABLE OF AUTHORITIES

Pages

Cases

Anderson v. Celebrezze, 460 U.S. 780 (1983) 15

City of Pleasant Grove v. United States, 479 U.S. 462 (1987) 11

Clark v. Roemer, 111 S.Ct. 2096 (1991) 4,8,9,12-13

Dougherty County Board of Education v. White, 439 U.S. 32 (1978) 5,6,8

Dunn v. Blumstein, 405 U.S. 330 (1972) 13

Georgia v. United States, 411 U.S. 526 (1973) 5,6,7

Montano v. Lefkowitz, 575 F.2d 378 (2d Cir. 1978) 13

Moore v. Ogilvie, 394 U.S. 814 (1969) 13

NAACP v. Hampton County, 470 U.S. 166 (1985) 5,6,10

Perkins v. Matthews, 400 U.S. 379 (1971) . . . 5,6,7

Rosario v. Rockefeller, 410 U.S. 752 (1973) . . 13

Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911) 13

Storer v. Brown, 415 U.S. 727 (1974) 13

United States v. Munsingwear, Inc., 340 U.S. 32 (1950) 13

Watkins v. Mabus, 60 U.S.L.W. 3358 (Nov. 12, 1991) (No. 91-434) 12

Whitcomb v. Chavis, 403 U.S. 124 (1971) . . . 7

Statutes and Regulations

Voting Rights Act of 1965, § 5, 42 U.S.C. § 1973c (1988) 1,*passim*

28 C.F.R. § 51.13(d) (1991) 7

28 C.F.R. § 51.13(j) (1991) 8

28 C.F.R. § 51.13(e) 8

28 C.F.R. § 51.17(b) 8

Ala. Act No. 91-187 ("the Dog Racing Act") (codified as Code of Ala. § 11-65-1 *et seq.* (Michie Supp. 1991)) 1,12

Other Materials

Attorney General Ann. Rep. (1986) 8

No. 91-962

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, *ET AL.*,

Appellees.

On Appeal from the United States District Court for the Northern District of Alabama

BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

INTRODUCTION

The Motion to Dismiss or Affirm is as remarkable for what it does *not* argue as for what it does. The City does not deny -- as, indeed, it could not -- that Ala. Act No. 91-187 ("the Dog Racing Act") contains a number of "voting qualification[s]" and "standard[s], practice[s], or procedure[s] with respect to voting." Voting Rights Act of 1965, § 5, 42 U.S.C. § 1973c. Among other things, the Dog Racing Act: (a) requires the holding of a special election in Birmingham to decide whether to authorize pari-mutuel betting on greyhound racing; (b) restricts the electorate for that election to only a portion of

Birmingham's electorate; (c) forbids the City from holding such election in conjunction with mayoral or councilmanic elections; and (d) prescribes the form of the ballot.

Nor does the City deny -- with one minor, and mistaken, quibble[1] -- that the voting-related provisions of the Dog Racing Act are "different from those in force or effect on November 1, 1964." Voting Rights Act of 1965, § 5, 42 U.S.C. § 1973c. The Dog Racing Act requires an election where none was required before; de-annexes part of Birmingham for the purposes of holding that election; and creates a new set of appropriate dates on which to hold that election. *See* Jurisdictional Statement at 10-12.

That would seem to be the end of this case. Appellees enacted and sought to administer unprecleared election-law changes. Far from asking this Court to

---

[1] The City repeats the erroneous supposition of the court below that because voters in Shelby County did not vote in the 1984 *horse* racing referendum, including them in the 1991 *greyhound* racing referendum would have constituted a change requiring preclearance. This supposition is wrong for at least two distinct reasons. First, in 1984, no part of Birmingham lay within Shelby County. *See* Juris. St. at 3 n. 2. Subsequently, Birmingham annexed a portion of Shelby County. In 1984, *all* Birmingham residents were entitled to vote in a referendum concerning whether to permit pari-mutuel betting within the city, while in 1991, *some* Birmingham residents were barred from voting in such a referendum. This clearly constitutes a "change." Second, there was *no* pre-existing definition of the scope of the franchise for greyhound racing referenda in Class 1 municipalities prior to the passage of the Dog Racing Act. Thus, the Act's definition represents a "change" from pre-existing law. Surely if the Legislature had passed a law saying that only persons eligible to vote in the 1984 referendum could vote in the 1991 referendum, the City would concede that such a law required preclearance. If that is so, then there is no basis for exempting the Dog Racing Act.

summarily affirm the decision of the Court below, they should have confessed error. (The City does seem to be confused about these questions in view of its admission that it never sought preclearance for the 1984 referendum on horse racing *either*, *see* Motion to Dismiss or Affirm at 2.)

Instead, the City advances three arguments. First, it suggests that because black voters in Birmingham support the establishment of a pari-mutuel greyhound track, the failure to preclear the Dog Racing Act should be overlooked. *See* Motion to Dismiss or Affirm at 3-6 and 8. Second, despite the fact that Congress squarely reserved questions of actual discriminatory purpose or effect for the Attorney General or the District Court for the District of Columbia, the City argues that the changes at issue were *de minimis* or benign. *See* Motion to Dismiss or Affirm at 7-8. Third, the City claims that this controversy is moot because, appellant's request for an injunction having been denied, the August 27 special election has occurred. *See id.* at 9. Each of this arguments is completely meritless.

I. WHETHER BIRMINGHAM'S BLACK CITIZENS WANT A DOG RACING TRACK IS COMPLETELY IRRELEVANT TO THE QUESTION OF SECTION 5 COVERAGE

Much of the City's motion, and virtually all of their 62-page appendix, is aimed at showing this Court that Birmingham's black voters favor greyhound racing. That, however, is simply not at issue in this § 5 coverage proceeding. If the voters decide in a fairly conducted election to authorize pari-mutuel dog racing, appellant has absolutely no Voting Rights Act objection to that

determination. She merely seeks to ensure that black voters *are* given that fair opportunity to make their voices heard. Section 5 of the Voting Rights Act was intended to provide federal oversight regarding election law changes in covered jurisdictions, such as Alabama, precisely because of the historic danger that, both intentionally and inadvertently, black voters were denied an equal opportunity to participate in the political process. As we explain below, there is a substantial danger in this case that election procedures mandated by the Dog Racing Act *do* discriminate against black voters.

In any event, whether preclearance was required is completely independent of the merits of the referendum. Preclearance, as its name implies, must take place *before* a change is implemented. *See Clark v. Roemer*, 111 S.Ct. 2096, 2101 (1991). Section 5 was intended to be a "self-monitoring" provision, *id.* at 2104, under which covered jurisdictions would seek preclearance without first being hauled into court. Thus, at the time that the Dog Racing Act and the Birmingham and Jefferson County resolutions should have been submitted for preclearance, the likely outcome of the referendum, or the motives of private attorneys general who might seek to enforce § 5 if the City flouted the law, were entirely conjectural, besides being utterly irrelevant to the legal duty to seek preclearance. Indeed, given appellant's conceded standing, her reasons for seeking to enforce § 5 are wholly beside the point.[2] In fact, in several of the cases relied on most heavily by the City, the plaintiffs were candidates for office who sought

---

[2] Birmingham's frenzied references to how "economic interests," "pawn[s]," "fronts" "nominal" parties, and outsiders from Greene County are seeking to "pervert" section 5 of the Voting Rights Act of 1965, *see* Motion to Dismiss or Affirm at i, 3, 4, n.5, and 8, speak for themselves.

to use § 5 to aid in their own elections, certainly a self-interested motivation. *See, e.g., Dougherty County Board of Education v. White,* 439 U.S. 32, 34 (1978); *Perkins v. Matthews*, 400 U.S. 379, 383 (1971).

II. THE CITY HAS DIRECTED ITS CLAIM THAT THE DOG RACING ACT HAS NEITHER DISCRIMINATORY PURPOSES NOR EFFECTS TO THE WRONG AUDIENCE

Much of the City's brief is directed toward the proposition that the challenged portions of the Dog Racing Act do not discriminate against black voters. That argument is completely beside the point in a section 5 *coverage* case such as this one. That argument can properly be directed *only* to the Attorney General, in an administrative preclearance submission or to the United States District Court for the District of Columbia in a declaratory judgment action. *See* Jurisdictional Statement at 18-20.

A. *The City Seriously Distorts this Court's Analysis*

The City seeks to avoid the force of Congress' express statutory command by repeating the assertion of the court below that *de facto* preclearance can be given by a local district court when that court concludes that *it* sees no "potential for discrimination." *See* Motion to Dismiss or Affirm at 6. That assertion reflects a complete misreading of this Court's opinions in *NAACP v. Hampton County*, 470 U.S. 166 (1985); *Dougherty County*; *Georgia v. United States,* 411 U.S. 526 (1973); and *Perkins*.

First, contrary to the City's suggestion, the phrase "potential for discrimination" has not operated to limit the

definitional scope of § 5 to a subset of all election law changes; rather it has served to explain this Court's rejection of claims that various enactments did not involve "voting" in the first place. Thus, *Perkins* used the phrase to explain why changes in polling places and municipal boundaries can impede the ability to vote or dilute the impact of a voter's ballot; *Georgia v. United States* used it to reiterate why legislative reapportionments affect voting rights; *Dougherty County* used it to show why some school board personnel regulations can interfere with voting rights; and *Hampton County* used it to describe why even changes that seem to be "an improvement over prior voting procedures" requires preclearance. 470 U.S. at 180.

Second, those cases squarely reject the proposition that local district courts have any authority to inquire into the purpose or effect of a challenged procedure. The local three-judge court in *Perkins* had found that the particular polling place changes were necessary, resulted in the use of better facilities, and had no discriminatory motivation. This Court expressly disapproved that reasoning: "these considerations, so far as relevant, are relevant only to the questions reserved by § 5 for consideration by the Attorney General of the United States or the District Court for the District of Columbia." 400 U.S. at 386. Similarly, in *Hampton County*, this Court made clear that even changes "undertaken in good faith" or that seem to be "an improvement over prior voting procedures" requires preclearance. 470 U.S. at 180: "More fundamentally, it is not our province, nor that of the [local] District Court below, to determine whether the changes ... in fact resulted in impairment of the right to vote, or whether they were intended to have that effect. That task is reserved by statute to the Attorney General or to the District Court for the District of Columbia." *Id.* at 181.

Third, the City cannot exempt particular instances of arrangements already held subject to § 5 on the grounds that, in its estimation, the particular arrangements it has devised do not have the potential for discrimination. This Court's cases make clear that when it holds that a particular type of enactment must undergo preclearance, it is holding that *all* such enactments *always* require preclearance. In *Perkins*, for example, the Court made clear that its ruling was completely independent of the actual polling places selected by Canton, Mississippi: "there *inheres* in the determination of the location of polling places an obvious potential for 'denying or abridging the right to vote on account of race or color.'" 400 U.S. at 388 (emphasis added); *see also id.* at 389 ("a potential for racial discrimination in voting ... inheres in a change in the composition of the electorate affected by an annexation"). Today, therefore, *all* polling places changes must be precleared. 28 C.F.R. § 51.13(d). Similarly, in *Georgia v. United States,* the Court made clear that *all* legislative reapportionments undertaken by covered jurisdictions fall within § 5. 411 U.S. at 534-35.[3]

The import of this categorical approach for this case is obvious. Based on the decisions of this Court, the Attorney General (whose views this Court has found to be entitled to great deference, *see* Jurisdictional Statement at 10)[4] has concluded that the potential for discrimination is

---

[3] The Court in *Georgia v. United States* relied on *Whitcomb v. Chavis,* 403 U.S. 124 (1971) -- a case involving reapportionment in Indiana -- for the proposition that multimember districts have the potential for discrimination in general. *See Georgia v. United States,* 411 U.S. at 534.

[4] In light of the special role played by the Attorney General in administering and enforcing § 5, it might be appropriate

sufficiently inherent to require preclearance of legislation requiring special elections, 28 C.F.R. § 51.13(j); legislation de-annexing parts of a city for election purposes, 28 C.F.R. § 51.13(e); and legislation setting the dates for special elections, 28 C.F.R. § 51.17(b). It is simply not open to local district courts to revisit those judgments by asking whether in a particular case, that potential for discrimination is likely to be realized.

The illogic of the City's position can be illustrated by a simple fact. The Attorney General reviews roughly 17,000 changes each year. *Clark v. Roemer,* 111 S.Ct. at 2104. Yet he interposes objections to only a few hundred. *See, e.g., Dougherty County,* 439 U.S. at 41-42 (in 1977, less than 2% of submitted changes led to objections); Attorney General Ann. Rep. 125, 131 (1986) (in 1986, Attorney General objected to 101 of 20,000 changes). Thus, literally thousands of changes are submitted each year which are precleared without difficulty. The reason these changes must be submitted is not because they are discriminatory; the vast majority clearly are not. Rather, it is because they fall within the definition set by Congress: they involve voting standards, practices, and procedures.

B. *If the City* Had *Submitted the Dog Racing Act for Preclearance, the Attorney General Might Well Have Found it to be Discriminatory*

The question whether the challenged provisions of the Dog Racing Act are actually discriminatory is not properly before this Court. The sole issue in this proceeding is whether preclearance is required. But, contrary to the City's obfuscations, if the Attorney General *had* been

---

in this case to call for the views of the Solicitor General.

asked to review the changes at issue here, he would have had strong reason to refuse preclearance.

The City argues from the results of the unprecleared election that, since black voters supported greyhound racing, there was no discrimination. *See* Motion to Dismiss or Affirm at 6 and 8. Reasoning backward from the results of an unprecleared election is not, however, a sound basis for finding no violation of the Voting Rights Act. *Cf. Clark v. Roemer,* 111 S.Ct. at 2102 ("[v]oters may be ... inclined to avoid the polls when an election is held in conceded violation of federal law"). If the election was conducted on terms that violated the Act, or which the Attorney General would have found to be discriminatory -- had he been asked -- then its results should hardly be taken to justify the violation. And there is ample reason to suppose that he would have found these arrangements discriminatory.

This is shown by the very figures the City trumpets. A review of the Appendix to the City's Motion shows that at the time of the special election, there were 76 precincts in which 90 percent or more of the registered voters were white, and 41 in which 90 percent or more of the registered voters were black. Among the thirteen one-race precincts with turnout of over 50 percent, only one was black, while twelve were white. At the other extreme, of eleven precincts with turnout of less than one-third of registered voters, eight were black and only three were white. Another comparison is equally revealing: in each of the ten white precincts with the largest numbers of registered voters, turnout was over 40 percent, while of the ten most populous black precincts, five had turnouts below 40 percent. Put simply, black turnout was lower than white turnout. If Birmingham's black community really did favor greyhound racing, it was disadvantaged by the gap in

actual participation in the August special election.

It has long been recognized that special elections depress voter turnout. *See, e.g., Hampton County,* 470 U.S. at 178; *see also* Appendix to Motion to Dismiss or Affirm at A-9. It is entirely possible that the gap between black and white turnout in Birmingham was exacerbated by the decision to conduct the greyhound referendum in August rather than during the upcoming general election.

Moreover, the testimony of Mayor Richard Arrington -- on whose bona fides the City places such heavy reliance, *see* Motion to Dismiss or Affirm at 8 -- at least suggests that this depressed turnout was not entirely unintended:

> Q: Did you see any adverse effect or a potential adverse effect that could occur to you if dog racing was in fact on the same date that your election was?
>
> . . . . .
>
> A: Yes, based on my experience in politics, twenty years here in this city, I thought it could have an adverse effect on me, on my race, and on the black voter turnout, on both I felt it could, because in the black community the ministers play a key role and they've been very important in supporting me, and I was aware from my discussion with some of the ministers that they were concerned about the greyhound racing issue, that was one thing, and I did not want to be in a race where the ministers were on one side and I'm on the other side at the time I'm running.

Transcript of Aug. 22, 1991, Hearing at 32.

The implications of the Mayor's statement belie his

self-serving protestations that he hoped to increase voter turnout by isolating the two elections from one another. His real concern seems to have been to avoid having pro-Arrington, anti-greyhound black ministers lead their followers to the polls on an occasion when they could vote both for the mayor and against the dog track. In short, he hoped the (presumably) black congregants of black ministers who opposed dog racing would not turn out to defeat the referendum.

Again, whether there was a discriminatory purpose behind the way in which the election was scheduled, or whether the scheduling had an actual discriminatory effect, is irrelevant to the present inquiry. Clearly, there is the *potential* for such discrimination. The proper forum for determining whether there was actually discrimination is the preclearance process.[5]

---

[5] The City also argues that the exclusion of the Shelby County portions of Birmingham from the referendum electorate had no potential for discrimination, because the Shelby County annexation is 98.78% white. *See* Motion to Dismiss or Affirm at 7. That argument completely ignores this Court's analysis in *City of Pleasant Grove v. United States*, 479 U.S. 462 (1987). There, this Court affirmed the denial of preclearance to a proposed annexation of virtually vacant land by an essentially all-white municipality. Given that the boundary change was actually discriminatory, *a fortiori* it had the "potential for discrimination." The record below contains no details about the size of the Shelby County annexation, or about projected demographic developments within the area. It is entirely possible that at some point in the future, before Birmingham approves pari-mutuel betting on greyhound racing, a significant number of black voters might move into the Shelby County portion of the city, and thereby be disenfranchised from voting in a dog-racing referendum. Given that possibility, there is an obvious potential for discrimination. As we say, the record before this Court and the court below is completely empty of the facts necessary to assess this possibility. But these are precisely the kind of facts that the Department of Justice, in

III. THIS CASE IS NOT MOOT

The City suggests, without citation to a single authority, that this case is moot because the proposal to authorize greyhound racing in Birmingham was defeated at the special election held on August 27, 1991. This Court should look to the court below, which knew perfectly well that this case was not rendered moot, as its order ruling against appellant on the merits of her motion for reconsideration after the election showed. *See* App. to Juris. St. at A-24 to A-28.

As the district court recognized, the defeat of the proposal means this case is very much alive. Section 4(d) of the Dog Racing Act, Code of Ala. 11-65-4(d) (Michie Supp. 1991), provides that "[o]ne or more subsequent elections may be requested ... if the question submitted at the preceding election ... does not receive the required majority"; at each such election, the same provisions challenged here -- specifically the disenfranchisement of certain city residents, the form of the questions to be presented, and the ban on conducting the referendum in tandem with mayoral or councilmanic elections -- will govern.[6] Thus, this case is no more moot than was *Clark*

---

administrative preclearance or in defense of a declaratory judgment action in the District of Columbia, would ascertain. Their absence from this record merely demonstrates that this is the wrong forum in which to resolve this question.

[6] Appellant recognized that her claim that the choice of August 27, 1991, for the initial referendum was rendered moot, and accordingly did not press that claim before this Court. *Cf. Watkins v. Mabus*, 60 U.S.L.W. 3358 (Nov. 12, 1991) (No. 91-434) (dismissing, on *Munsingwear* grounds, a § 5 claim involving absentee ballot procedures adopted for an already completed election).

v. Roemer, which this Court decided last Term. There, plaintiffs sought preclearance for a number of changes adopted in the 1960's or 1970's. 111 S.Ct. at 2099. Although elections had occurred under the unprecleared changes, the *prospect* that future elections would occur under the changes meant that the case was entirely alive. Indeed, but for the precedential value of the opinion below, any other black voter in Birmingham remains free to initiate his or her own § 5 lawsuit against the various election-law changes enacted as part of the Dog Racing Act.[7]

Moreover, this Court has long recognized that, precisely because election laws outlive the individual elections they govern, challenges to those laws are not rendered moot by the occurrence of individual elections. The Court has repeatedly treated election-law challenges as "'capable of repetition, yet evading review' .... [as long as] the laws in question remain on the books," *Dunn v. Blumstein*, 405 U.S. 330, 333 n. 2 (1972) (quoting *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911)). *See also, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 784 n. 3 (1983) (same); *Storer v. Brown*, 415 U.S. 727, 737 n. 8 (1974) (same); *Rosario v. Rockefeller*, 410 U.S. 752, 756 n. 5 (1973) (same). As Judge Friendly recognized, challenges to laws governing special elections are "peculiarly" subject to this problem because of "the very speed" with which they are announced and conducted. *Montano v. Lefkowitz*, 575 F.2d 378, 382 (2d Cir. 1978). This case illustrates precisely that problem. The Dog Racing Act became law on July 28, 1991, and the City and County were able to

---

[7] If this Court *does* conclude that this case is moot, then the judgment of the court below should be vacated under *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950).

pass resolutions setting an election date less than one month later. It is clearly impossible to litigate an entire § 5 case, including resolution of coverage issues by this Court, in 30 days. Yet Birmingham and Jefferson County retain the authority to set dog racing referenda elections a mere 30 days beforehand once a year until such a referendum passes. If, as the City implicitly concedes in the final paragraph of its argument, "[a]ppellant ... is free to seek to enjoin any such election or, if held, to seek a declaration voiding or nullifying the election results," Motion to Dismiss or Affirm at 9, then she is free to maintain this lawsuit as well.

CONCLUSION

For the reasons stated in this Brief and in the Jurisdictional Statement, this Court should either note probable jurisdiction or summarily reverse the judgment below.

Respectfully submitted,

PAMELA S. KARLAN
Counsel of Record
University of Virginia
School of Law
Charlottesville, Va. 22901
(804) 924-7810

ROSE M. SANDERS
Chestnut, Sanders, Sanders
& Pettaway, P.C.
P.O. Box 1305
Selma, Alabama 36702-
(205) 875-9264

EBEN MOGLEN
Columbia University
School of Law
435 West 116th Street
New York, N.Y. 10027
(212) 854-8382

Attorneys for Appellants

Supreme Court, U.S.
FILED
MAY 11 1992
OFFICE OF THE CLERK

(5)

No. 91-962

IN THE

Supreme Court Of The United States

October Term, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

MEMORANDUM REGARDING THE STATUS OF REQUEST FOR PRECLEARANCE

JAMES K. BAKER
Counsel of Record
Attorney for the City
of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

MEMORANDUM REGARDING THE STATUS OF REQUEST FOR PRECLEARANCE

This appeal is from the decision of a three-judge court pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(c). The question presented by this appeal is whether the City was required by the Voting Rights Act to seek preclearance of (1) legislation providing for a referendum on greyhound racing and parimutuel wagering thereon (Act 91-187) and (2) the setting of a referendum held pursuant to that legislation. By letter dated February 13, 1992, the City submitted to the Justice Department, Civil Rights Division, Voting Rights Section (the "Voting Rights Section" or "Section") a request for preclearance of the subject legislation and of a June 2, 1992, setting of a referendum under that legislation. In light of that submission, the City filed with this Court a Suggestion of Mootness. By letter dated February 27, 1992, the Clerk of Court, over the signature of Francis J. Lorsen, Chief Deputy Clerk, instructed the City to apprise the Court as to the status of the preclearance request and directed that a status memorandum be submitted on or before May 13, 1992. This pleading is submitted in accordance with that directive.

By letter dated April 14, 1992, the Voting Rights Section notified the City that, excepting one provision, the Attorney General does not interpose any objection to Act 91-187, specifying the procedures for conducting a referendum to authorize greyhound racing and parimutuel wagering thereon in the City of Birmingham. The letter further states that the Attorney General also does not interpose any objection to the selection of the August 27, 1991, and June 2, 1992, referendum dates. The April 14 letter is reproduced in its entirety as Appendix A, hereto.

The Voting Rights Section did not preclear a provision providing that the referendum not be held in conjunction with a Birmingham City election for Mayor of for two or more council members. With respect to that provision, the Section concluded that it did not have sufficient information upon which to make a determination. Consequently, the Section requested a substantial amount of information it considers necessary to complete its analysis of the remaining provision.

As noted, the provision remaining under consideration forbids the holding of a referendum in conjunction with a mayoral or councilmanic election. No such elections will occur in 1992; council member elections will next occur in 1993, the next mayoral election will occur in 1995. Hence, the only provision yet to be precleared is of no consequence to the June 2, 1992, referendum (which has itself already been precleared). If the June 2 referendum passes, no further elections can ever be had under Act No. 91-187. As a result, the subject provision may never be applied. Given that possibility and the substantial time and expense involved in responding to the Section's request, by letter dated May 4, 1992, the City indicated to the Section its intent to await the outcome of the June 2 referendum before providing the requested information. The City's May 4, 1992, letter to the Voting Rights Section is reproduced in its entirety as Appendix B, hereto.[1] As the May 4 letter to the Voting Rights Section indicates, the City believes that preclearance of the outstanding provision will be unnecessary if the June 2

[1]The penultimate paragraph of the May 4 letter erroneously states that the provision in question could not be given effect until 1995. As noted above, 1995 is the date of the next mayoral election; councilmanic elections will occur in 1993. The City has, by letter dated May 8, corrected its misstatement.

referendum passes; the City will provide the requested information and pursue preclearance of the outstanding provision should the June 2 referendum fail.

The foregoing, together with the appended correspondence, provides a complete and accurate description of the preclearance proceedings to date.

Respectfully submitted

JAMES K. BAKER
Counsel of Record
Attorney for the City
of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

APPENDIX A

U.S. Department of Justice
Civil Rights Division

JRD:MAP:DJH:maj
DJ 166-012-3
92-0591

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

April 14, 1992

James K. Baker, Esq.
C/O Haskell, Slaughter, Young & Johnston
800 AmSouth-Sonat Tower
1900 Fifth Avenue North
Birmingham, Alabama 35203

Dear Mr. Baker:

This refers to the following matters submitted to the Attorney General for review under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, by the City of Birmingham in Jefferson County, Alabama:

1. Act 84-131, which specifies the procedures for conducting a referendum to authorize horse racing in the City of Birmingham;

2. Act 91-187, which specifies the procedures for conducting a referendum to authorize horse racing or greyhound racing in the City of Birmingham where neither previously has been authorized;

3. Act 91-187, which specifies the procedures for conducting a referendum to authorize greyhound racing and pari-mutuel wagering thereon (in addition to the previously authorized horse racing and pari-mutuel wagering thereon) in the City of Birmingham, including:

a. the provision that the measure must be approved both by the electorate of Jefferson County and the electorate of the City of Birmingham located in Jefferson County,

b. the provision that the initial referendum election was to be held prior to January 1, 1992,

c. the provision that any referendum be conducted between 45 and 90 days after the adoption by the City of Birmingham of an ordinance or resolution setting the date of the election,

d. the provision that the referendum may not be held in conjunction with a Birmingham city election for mayor or for two or more councilmembers, and

e. the provision allowing the holding of successive elections on the issue if the issue is defeated in a prior election, with the limitation that not more than one election may be conducted each year;

4. The selection of August 27, 1991, as the date for conducting the initial referendum election on greyhound racing; and

5. The selection of June 2, 1992, as the date for conducting a second referendum on greyhound racing.

With respect to the matter specified in item 1, your April 2, 1992, letter withdraws this from Section 5 review. In addition, with respect to the matter specified in item 2, we understand that this effects no change with respect to the City of Birmingham since horse racing previously has been authorized in the city, and does not apply to any other Alabama jurisdiction. Accordingly, the Attorney General will make no determination concerning these matters. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35).

With respect to the matters specified in item 3, the Attorney General does not interpose any objection except for the provision specified in item 3(d). The Attorney General also does not interpose any objection to the selection of August 27, 1991, and June 2, 1992, referendum dates. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See 28 C.F.R. 51.41 and 51.43.

The precleared referendum procedures are viewed as enabling legislation. Therefore, any changes affecting voting

which may be subsequently adopted pursuant to those procedures will be subject to Section 5 review (*e.g.*, the selection of another referendum date if the proposition fails on June 2, 1992). 28 C.F.R. 51.15.

With respect to the provision specified in item 3(d) prohibiting the holding of the greyhound racing referendum in conjunction with certain municipal elections, our analysis indicates that the information sent is insufficient to enable us to determine that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, as required under Section 5. The following information is necessary so that we may complete our review of your submission:

1. A detailed explanation of the reasons for the adoption of this provision.

2. A detailed, chronological description of the events, meetings, and discussions leading to adoption of this provision. Include a description of all discussions involving any City of Birmingham or Jefferson County elected official, any city or county staff person acting on behalf of an elected official, or any member of the state legislature regarding the merits or demerits of the provision, or any alternative provision, including discussions other than at formal meetings.

3. Copies of all documents relating to the provision, including minutes, transcripts, and tape recordings of all relevant municipal, county, and state legislative meetings and hearings; correspondence sent by or addressed to any persons identified in the previous paragraph; and all newspaper articles, editorials, letters to the editor, and other publicity concerning the provision.

4. A listing of all citywide or countywide special elections (not conducted in conjunction with a regularly scheduled election) in Birmingham or Jefferson County from 1980 to the present. For each such election (including the August 27, 1991, greyhound racing referendum), include the election returns, by precinct; describe the issue or contest on the ballot; and provide any information or estimate of the black registra-

tion percentage or black voting age population percentage in each precinct at the time of the election. Also provide the same information for regular Birmingham municipal elections from 1985 to the present.

5. A listing of any other state legislation providing for a local referendum, adopted since 1970, which contains a provision precluding the holding of the referendum in conjunction with any regularly scheduled election or a certain category of regularly scheduled elections.

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. 28 C.F.R. 51.37. However, if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. See also 28 C.F.R. 51.40 and 51.52(a) and (c). Changes in procedures which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. Therefore, please inform us of the action the City of Birmingham plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, please call Mark A. Posner, an attorney in the Voting Section, at 202-307-1388. Refer to File No. 92-0591 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By: /s/ Steven H. Rosenbaum
Steven H. Rosenbaum
Chief, Voting Section

APPENDIX B

JAMES K. BAKER
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

May 4, 1992

Mr. Mark A. Posner
Civil Rights Division
Voting Rights Section
Post Office Box 66128
320 1st Street, N.W.
Washington, D.C. 20035-6128

Re: City of Birmingham, Greyhound Referendum,
File No. 92-0591

Dear Mr. Posner:

By letter dated April 14, 1992, the Voting Rights Section responded to our request for preclearance with regard to the above-referenced matter. The City of Birmingham and all involved in preparing for the upcoming June 2 election appreciate the cooperation of the Section and the timely and thoughtful attention which was given to the City's preclearance request.

As you know, the Section precleared the August 27, 1991, referendum, the upcoming June 2, 1992, referendum, and all but one provision of Act No. 91-187 (specifying the procedures for conducting a referendum to authorize greyhound racing and parimutuel wagering thereon in the City of Birmingham, Alabama). With respect to one provision — that a referendum may not be held in conjunction with a mayoral or council-manic election — the Section concluded that the information available was insufficient to enable it to reach a final determination under Section 5, and accordingly, the Section requested further information from the City. Please accept this letter as the requested response from the City of Birmingham.

The City has no objection to providing the Voting Rights Section with such of the requested information as the City can gather. However, collection of the information and documents requested represents a very substantial undertaking. For example, a response to request No. 5 (listing of other State legislation providing for local referendum and which precludes certain election dates) requires manual review of every piece of local legislation passed since 1970; such local acts of the Legislature are not codified and there is no index therefor. It is self-evident that extensive effort will be required to locate and assemble the other information and documents requested by the Section.

As a result, it is the City's desire to undertake the substantial time and expense involved in gathering the requested information only if some purpose will be served by doing so. In that regard, the City notes that if the June 2 referendum passes, no further elections can be held under Act No. 91-187. The remaining provision, which does not come into play in any respect with regard to the June 2 referendum, can never have any future application should the June 2 referendum pass. Preclearance of the outstanding provision would, therefore, be moot.

Given the possibility that the provision remaining under consideration will be mooted by the results of the June 2 referendum, and given the substantial time and expense involved in collecting the information requested by the Section, the City believes it is appropriate to await the results of the June 2 referendum before undertaking the extraordinary burden of responding to the inquiry set forth in the Section's April 14 letter. Should the referendum pass, the City believes that preclearance of the remaining provision of Act No. 91-187 will be moot.

Consequently, the City plans to respond to the Section's inquiry should the June 2 referendum fail, even though the provision remaining under study could not be given effect until 1995. Meanwhile, the City perceives no benefit — to itself, to the Voting Rights Section, or the purposes of the Act

— in diverting the resources of the City and the Section to a matter that may shortly become moot.

If you have any questions or observations, please contact me or Richard Walston at the phone numbers and addresses already contained in your file. If you believe the City's position is in any way inappropriate, please let or Richard Walston know that as well.

Very truly yours,

/s/ James K. Baker

James K. Baker
Counsel for the City
of Birmingham

JCK/dlb/W62394.1

bcc: Mr. Milton McGregor
Mr. Fred Gray
Mr. William M. Slaughter
Mr. James C. Huckaby, Jr.
Mr. James K. Baker
Mr. Robert D. Shattuck, Jr.

Supreme Court, U.S.
FILED
FEB 13 1992
OFFICE OF THE CLERK

No. 91-962

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SUGGESTION OF MOOTNESS

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabma 35203
(205) 251-1000

No. 91-962

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1991

CYNTHIA HARRIS,

Appellant,

v.

THE CITY OF BIRMINGHAM, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

SUGGESTION OF MOOTNESS

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabma 35203
(205) 251-1000

SUGGESTION OF MOOTNESS

Appellee, the City of Birmingham (the "City"), hereby respectfully suggests to this Honorable Court that this case is moot and moves the Court to dismiss the nominal Appellant's appeal on that basis.

The City, in connection with its decision to set another referendum under the legislation made the basis of this Voting Rights litigation, has submitted that legislation to the Attorney General of the United States for preclearance. Consequently, there is no longer a live controversy and the appeal should be dismissed as moot.

This appeal is from the decision of a three judge court pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973(c). The sole issue to be decided by such a court is whether the challenged action — legislation or otherwise — is required to be precleared. The three judge court is not to determine whether legislation, or other challenged action, is in fact discriminatory in intent or effect, but only whether it must be submitted to the Attorney General for such a determination. *E.g., Perkins v. Matthews,* 400 U.S. 379, 384 (1971); *Doughterty Cty., Ga. Bd. of Ed. v. White,* 439 U.S. 32, 42 (1978); *NAACP v. Hampton Cty. Election Com'n,* 470 U.S. 166, 181 (1965).

Likewise, the determinative issue before this Court is whether the three judge court below correctly decided that the legislation here at issue was not required to be submitted for preclearance. Hence, once the subject legislative acts are submitted for preclearance, the § 5 issue before this Court evaporates, and the case is moot.

The City continues to believe and insist that: 1) The commencement and maintenance of this action constitutes the cynical exploitation and abuse of the Voting Rights Act in furtherance of economic interests wholly unrelated to legitimate concerns animated by the Voting Rights Act; and 2) that the Court below correctly determined that the subject legislative acts need not be precleared.

However, the City recognizes and must consider: 1) The substantial expense incident to proceedings in this forum; 2) the virtual certainty that the planned setting of another referendum will result in new, equally unpersuasive, but equally expensive voting rights litigation sponsored by the economic interests driving this case; and 3) that preclearance from the Justice Department will be as efficacious to the City's interests as an affirmance of the decision below — and at substantially less expense.

Given those considerations, by letter dated February 13, 1992, the City submitted the legislative acts at issue — and an anticipated setting for a referendum — to the Justice Department for preclearance. That letter, without its attachments, is reproduced in the appendix hereto, together with an affidavit to provide proof of mailing.

Plainly, the issue before this Court — whether the court below correctly decided that the City need not submit the legislation for preclearance — is now moot. The disputed legislation has now been submitted for preclearance by the Attorney General; whether or not such a submission is required by law is, accordingly, a dead issue. *See, Watkins v. Mabus,* ___ U.S. ___, 112 S.Ct. 412 (1991).

For the reasons stated, this Court is due to dismiss as moot the appeal of the nominal Appellant.

Respectfully submitted,

/s/ James K. Baker

James K. Baker
Counsel of Record
Attorney for the City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES

CYNTHIA HARRIS,	)	
	)	
Appellant,	)	
	)	CASE NO. 91-692
v.	)	
	)	
THE CITY OF BIRMINGHAM	)	
et al.,	)	
	)	
Appellees.	)	
	)	

AFFIDAVIT OF MICHAEL A. BURNETT

My name is Michael A. Burnett, and I am over the age of eighteen (18) years. I have personal knowledge of the matters stated herein.

On February 13, 1992, I deposited in the United States mail the attached letter, together with its attachments, addressed as indicated, first class postage prepaid.

Also on February 13, 1992, I delivered to Federal Express for overnight delivery a second original of the attached letter, together with its attachments, addressed as follows: Assistant Attorney General, Civil Rights Division, Department of Justice, Tenth Street and Constitution Avenue, N.W., Washington, D.C. 20530.

I have read the foregoing affidavit, and it is true and correct.

/s/ Michael A. Burnett

Michael A. Burnett

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Michael A. Burnett, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal, this 13th day of February, 1992.

[NOTARIAL SEAL] /s/ Diane Burtnett Stokes
Notary Public

My Commission Expires: 10-15-92

James K. Baker
c/o Haskell Slaughter Young & Johnston
800 AmSouth-Sonat Tower
1900 Fifth Avenue North
Birmingham, Alabama 35203
(205) 251-1000 (ext. 418)

February 13, 1992

VIA FEDERAL EXPRESS and
UNITED STATES MAIL

Assistant Attorney General
Civil Rights Division
Department of Justice
Post Office Box 66428
Washington, D.C. 20035-6128

Attention: Chief, Voting Rights Section

Re: Section 5, Voting Rights Act Submission,
State of Alabama Acts 84-131 and 91-187
(codified 1975 Code of Alabama 11-65-1 et seq.)
and Setting of Referendum Thereunder

Dear Sir:

The above referenced statutes enacted into law by the legislature of the State of Alabama are enclosed and are hereby submitted for pre-clearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c by the City of Birmingham. Also submitted for preclearance is the setting of a referendum to be held pursuant to Act No. 91-187.

The legislative enactments involved are, respectively, authorization to Class 1 cities in Alabama (Birmingham being the

only such city) to permit Horse Racing (Act 84-131) and Greyhound Racing (Act 91-187) and pari-mutuel wagering thereon. The 1991 Greyhound Racing Act was an amendment to the 1984 Horse Racing Act. As far as can be ascertained, neither the Horse Racing Act nor its Greyhound Racing amendment have been submitted for Section 5 clearance by either the State of Alabama or any affected local government or governmental entity or commission.

A relevant narrative of the provisions and the history to date of these statutes is in order:

Both the Horse Racing Act and the amendatory Greyhound Racing Act conditioned the conduct of horse and greyhound racing on the approval at a referendum election of a majority of the voters of Jefferson County (wherein the track facility and the City of Birmingham are located) voting in the election *and* a majority of the Birmingham Voters who voted in the election. At the time of the June 12, 1984 Horse Racing election, Birmingham was located entirely in Jefferson County. Horse Racing was approved at the election. Unfortunately, Horse Racing, as conducted at the Birmingham track, was a financial disaster causing the track to cease racing operations.

Greyhound racing, as had been then authorized for several years by Alabama legislative acts in the City of Mobile and in Macon and Greene Counties, enjoyed a more successful economic history. In apparent response to this fact, interested Birmingham forces joined in pursuing the enactment of a state statute authorizing Greyhound racing at the then-dormant horse racing facility in the City. Hence, the July 18, 1991 enactment of the Greyhound Racing amendment to the 1984 Act authorizing horse racing in Birmingham.

As authorized by the Greyhound Racing Act (No. 91-187), the City Council of Birmingham called a referendum election for August 27, 1991, among Jefferson County and City of Birmingham voters on the question of the conduct of Greyhound Racing at the existing Birmingham racing facility. About two weeks prior to the election date, Greene County's Racing Commission, Board of Education and the Greene County

Commission (the County's governing body) (the "Greene County Interests") filed suit in the U.S. District Court in Birmingham seeking to enjoin the holding of the Birmingham-Jefferson County referendum election on greyhound racing because the Greyhound Racing Act (Act No. 91-187) had not been submitted for pre-clearance under Section 5 of the Voting Rights Act. Though the Greene County Interests were properly found to lack standing, they have pursued the litigation through a nominal plaintiff/appellant serving as their "front."

Here it should be noted that after the referendum on horse racing, the City of Birmingham annexed a small area in adjoining Shelby County. This annexation obtained at the time of the enactment of the Greyhound Racing Act and at the time of the August 27, 1991 referendum election on greyhound racing. Under the 1991 Act, however, eligible voters were only those residents registered to vote in Jefferson County and in the City of Birmingham located in Jefferson County. (The track, as previously stated, was situated in that portion of the City located in Jefferson County.) At the time of the August 27, 1991 election, there were 83 registered voters in the Shelby County area annexed to Birmingham, of which number 82 were white and one black. Incomprehensibly, the plaintiffs-appellants in their Section 5 lawsuit raised the exclusion of these 82 white voters in Shelby County as inimical to the interests of black voters. And this, not withstanding the irrefutable conclusion that, as widely expected, the greyhound election results showed black voters favored greyhound racing and whites did not (as further discussed hereafter).

Pursuant to the Act, a 3-judge court was assembled, which court held a hearing on August 21, 1991. On August 26, 1991, the court issued its Judgment and Order denying the plaintiffs' request for an order enjoining the holding of the August 27, 1991 election. The basis of the Court's unanimous holding was the lack of any basis upon which to conclude that the Horse Racing Act presented any *potential* for discrimination. A copy of the Court's opinion is enclosed. Plaintiffs appealed the

district court's decision to the United States Supreme Court (*Harris v. City of Birmingham, et al.*, No. 91-962). The City of Birmingham has responded to Appellants' Jurisdictional Statement. At this writing, the Supreme Court has issued no order in those proceedings.

The referendum election was held on August 27, 1991, with the result that Greyhound Racing lost, 66,747 voting "yes", and 79,289 voting "no."

As is evident from the enclosed district court's opinion, no evidence, direct or inferential, suggests that these Racing Acts on their face or as implemented were racially discriminatory in intent or effect. We ask that you not be misled by a contrary conclusion as a result of the opposition we anticipate will be directed at this request for preclearance. A vigorous challenge from organizations recognized as champions of minority rights might, under many circumstances, warrant close scrutiny of legislation submitted for preclearance. However, as mentioned above, the Voting Rights challenge to the subject acts has been mounted solely by entities with a financial interest in a competing dog track. Though counsel for the Greene County Interests may be recognized names in the Voting Rights arena, the fact remains that their efforts are on behalf of clients whose interests are purely financial; the attack on the subject acts has nothing to do with concern over dilution of black voting strength.

In fact, the objectors' interests are antithetical to the proven interests of the majority of black voters. The Greene County interests oppose a Jefferson County dog track and have already misused the Voting Rights Act as a pretext by which to defeat it. Most blacks support a Jefferson County track. Indeed, a canvass of the returns of the August 27, 1991, election boxes demonstrates that in the voting boxes whereat the majority of the voters were black, the vote in each of those boxes was strongly in favor of greyhound racing. For this information and for the current voter registration numbers by race in Jefferson County and the City of Birmingham, enclosed please find a copy of the Jefferson County Chairman of the Board of

Registrars affidavit, as filed by the City of Birmingham with the United States Supreme Court as an appendix in the City's responsive motion to Appellant's pending appeal in that Court. Though the City welcomes full review of the subject acts, it also requests that the Section consider the source in weighing any objections.

We believe the District Court's judgment and order adequately disposes of the Section 5 issues here raised. However, as authorized by the Greyhound Racing Amendment, a subsequent referendum election will be called and the Greene County greyhound racing interests will undoubtedly again seek to enjoin the referendum. Consequently, the City's interest in certainty and economy of resources dictates this submission.

It also seems appropriate at this time to seek preclearance of the intended setting of the upcoming referendum. The proposed date has not yet been established by the Birmingham City Council for the referendum must be held within 90 days after the formal establishment of an election date of the date on which established for the referendum. The Mayor intends to submit to the City Council June 2, 1992, as the date for the referendum election, and anticipates that the City Council will approve that choice. A referendum on that date will coincide with the democratic and republican primary elections in the State of Alabama. With regard to the potential of that setting for a discriminatory impact, it should be noted that the current court-ordered redistricting plan creates a predominantly black congressional district that includes a substantial portion of Jefferson County and the City of Birmingham. Thus, black voter turnout can be expected to be high on that date.

The City will gladly respond to any inquiry; contact the undersigned, Richard Walston, or Jim Huckaby at (205) 251-1000 or at the address on the letterhead. You may also contact Fred D. Gray at (205) 727-4830 or at Post Office Box 239, Tuskegee, Alabama 36083. Additionally, please copy both the under-

signed and Fred Gray on all correspondence regarding this matter. Your office's prompt response would be appreciated.

Sincerely,

/s/ James K. Baker

James K. Baker
Special Counsel
The City of Birmingham
800 AmSouth-Sonat Tower
Birmingham, Alabama 35203
(205) 251-1000

JKB/RHW/dlb/56183
Enclosures